

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~884~~ 33

UNITED MINE WORKERS OF AMERICA,
DISTRICT 12, PETITIONER,

vs.

ILLINOIS STATE BAR ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITION FOR CERTIORARI FILED DECEMBER 20, 1966
CERTIORARI GRANTED FEBRUARY 27, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 884

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[fol. A] [File endorsement omitted]

[fol. 1]

IN THE SUPREME COURT OF ILLINOIS

No. 39,642

ILLINOIS STATE BAR ASSOCIATION, ET AL., Plaintiffs-Appellees,

vs.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Defendants-Appellants.

Appeal from the Circuit Court of Sangamon County.

Honorable Creel Douglas, Judge Presiding.

Abstract of Record—Filed December 10, 1965

COMPLAINT—Filed June 11th, 1964

Come now the Illinois State Bar Association, an Illinois not for profit corporation, and Curtis F. Prangley, Bernard H. Bertrand, William Fedtig, Korean Movsisian, Henry W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson, and Marshall A. Susler, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association, Plaintiffs, and for their complaint against the Defendant, United Mine Workers of America, District 12, state:

1. That the Plaintiff, Illinois State Bar Association, is a not for profit corporation organized under the laws of the State of Illinois, for the purposes, among others, of establishing and maintaining the honor and dignity of the [fol. 2] courts and of the profession of law, the protection of the public, the fostering and promoting of a high standard of professional ethics, and the due administration of justice in all courts in the State of Illinois, including the courts in the County of Sangamon.

2. That the function of the Committee on Unauthorized Practice of Law, acting for and on behalf of the Illinois State Bar Association, is, among other things, to further and maintain the purposes aforesaid.

3. That the Plaintiffs, Curtis F. Prangley, Bernard H. Bertrand, William Fechtig, Korean Movsisian, Henry W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson, and Marshall A. Susler, individually, are attorneys, duly licensed and admitted to practice law in the State of Illinois, members of the Illinois State Bar Association and of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association.

4. That Plaintiffs, as attorneys at law and by virtue of the franchise granted to each and every one of them, have practiced law in the State of Illinois for a long period of years and maintain offices for such purpose throughout the State of Illinois; and as a result of their individual efforts and activities as attorneys at law, each has acquired and now has a law practice of great value from which they severally enjoy and receive compensation and income.

5. That the Defendant is a labor union composed of mine workers and has offices in Springfield, Sangamon County, Illinois.

[fol. 3] 6. That for many years Defendant has been engaged in the practice of law in Sangamon County and other counties in the State of Illinois in that in the course of providing services for members it has, and still does, employ an attorney on a salary basis for the purpose of representing its members with respect to claims they may have under the provisions of the Workmen's Compensation Act of the State of Illinois.

7. That the Defendant has on occasion filed claims with the Industrial Commission of the State of Illinois for and on behalf of a member without obtaining the member's permission, authorization, or approval.

8. That Defendant is not and under the statutes of the State of Illinois cannot be licensed to practice law in the State of Illinois.

9. That despite its not having a license to practice law, Defendant has, in the manner hereinbefore stated, offered, furnished, and rendered legal services and advice.

10. That said activities of the Defendant are contrary to equity and good conscience, are in contravention of the rights of the Plaintiffs herein who are duly licensed as attorneys at law, are contrary to public policy, are in violation of the laws of the State of Illinois, and not only tend to degrade the legal profession and to bring the same into bad repute in the administration of justice, but also tend to mislead and defraud the public.

11. That if the Defendant is permitted to continue in the practice of law in the manner and form hereinbefore set forth, irreparable injury and damage will be occasioned [fol. 4] to the Plaintiffs, all members of the legal profession, and to the public, and other individuals, firms, corporations and associations will be encouraged to engage in and continue in the unlawful practice of law.

12. That this cause is instituted on behalf of the Plaintiffs herein and all other attorneys at law who may wish to join with them as well as for the benefit of the public and all of the courts of the State of Illinois.

13. That Defendant will continue the unauthorized practice of law unless appropriate action is taken by this court to prevent and enjoin the same.

Wherefore, Plaintiffs pray that a permanent injunction may be granted herein restraining and enjoining said Defendant, its agents and employees, from doing any of the following acts:

1. Giving legal counsel and advice.
2. Rendering legal opinions.

3. Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of the State of Illinois or elsewhere.

4. Practicing law in any form either directly or indirectly.

5. Advertising, advising or holding itself out to members and others as practicing law or as having a right to practice law.

6. Charging or collecting fees, commissions or payments or apportioning dues of members in any form or manner for any legal services whatsoever rendered or to be rendered by said Defendant or its agents or employees to or on behalf of members and any other persons; and for such other and further relief as to the Court may seem meet and just.

Illinois State Bar Association, an Illinois not for profit corporation, and Curtis F. Prangley, Bernard H. Bertrand, William Fechtig, Korean Movisian, Henry W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson, and Marshall A. Susier, Individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association, Plaintiffs, By Curtis F. Prangley.

Chairman, Unauthorized Practice Law Committee, Illinois State Bar Association, 105 West Adams Street, Chicago, Illinois, Area Code 312-FR2-2552, By David J. A. Hayes, Jr.

Committee Counsel, Unauthorized Practice Law Committee, Illinois State Bar Association, and General Counsel, Illinois State Bar Association, 901 South Spring Street, Springfield, Illinois, Area Code 217-528-6408.

[fol. 6] Request for summons against Joe Shannon, as President, United Mine Workers, District 12, United Mine Workers Building, Springfield, Illinois.

Summons.

Sheriff's return showing service June 11, 1964.

Motion by Defendants for an order requiring Plaintiffs to make Complaint definite and certain, notice and proof of service thereof.

MOTION

Now comes Joseph Shannon, a member of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and come, also, all the members of said association made parties hereto by representation, by Edmund Burke, their attorney, and move the Court for an order in the above entitled cause directing the Plaintiffs to make their complaint definite and certain in the following particulars:

Stating the name or names, place or places or residence, and place or places of employment, of any person or persons for and on behalf of whom defendants filed a claim, or claims, with the Industrial Commission of Illinois without obtaining the member's permission, authorization or approval, and the date or dates of such filing.

Edmund Burke, Attorney for Defendants.

Edmund Burke, 217 South Seventh Street, Springfield, Illinois, Telephone: 528-7375.

[fol. 7] Order entered July 6th, 1964, requiring Plaintiffs to make Complaint more definite and certain.

Plaintiffs' answer to motion to make complaint more definite and certain and proof of service thereof. (Filed July 14, 1964.)

Come now the Illinois State Bar Association, an Illinois not for profit corporation, and Curtis F. Prangley, Bernard H. Bertrand, William Fechtig, Korean Movsisian, Henry W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson, and Marshall A. Susler, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association, Plaintiffs, by their attorney, David J. A. Hayes, Jr. and for answer to defendant's motion, to wit "Stating the name or names, place or places or residence, and place or places of employment, of any person or persons for and on behalf of whom defendants filed a claim or claims, with the Industrial Commission of Illinois without obtaining the member's permission, authorization or approval, and the date or dates of such filing" answer as follows:

Elery D. Morse, East Walnut Limits, Canton, Illinois, a member of the United Mine Workers District 12 was injured on or about July 18, 1961 in the course of his employment in or around Canton, Illinois.

In March of 1962, Elery Morse retained the services of Claudon and Elson, Attorneys at Law, 21 West Elm Street, Canton, Illinois, to file his application for adjustment of claim in regard to his claim against the Midland Electric Coal Corporation with the Industrial Commission of Illinois and to otherwise represent him in this matter.

[fol. 8] On or about June 28, 1962 Claudon and Elson filed an application for adjustment of claim for Mr. Morse with the Industrial Commission of Illinois in his claim against Midland Electric Coal Corporation, case No. 712133.

On July 23, 1962, M. J. Hanagan, Attorney for United Mine Workers District 12, filed an application for adjustment of claim for Mr. Morse with the Industrial Commission of Illinois in his claim against Midland Electric Coal Corporation, case No. 713647, without the consent, approval, authorization or knowledge of said Morse case No. 713647.

ANSWER—Filed July 31, 1964

Comes now Joseph Shannon, a member of District 12 United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and come also, all the members of said association made parties hereto by representation, by Edmund Burke, their attorney, and answer Plaintiffs' Amended Complaint as follows:

1) They admit the averments in Paragraph numbered (1) in the Amended Complaint.

2) They admit the averments in Paragraph numbered (2) in the Amended Complaint.

3) They admit the averments in Paragraph numbered (3) in the Amended Complaint.

4) They admit the averments in Paragraph numbered (4) in the Amended Complaint.

[fol. 9] 5) They admit the averments in Paragraph numbered (5) in the Amended Complaint.

6) They deny the averment in Paragraph numbered (6) in the Amended Complaint that they have been for many years engaged in the practice of law. They admit that they, severally and jointly, employ a competent attorney, who is a member of the Illinois State and the American Bar Associations, on a salary basis for the sole purpose of representing them and their defendants before the Industrial Commission in cases of injury and death arising out of and in the course of their employment as coal mine employees, which they and each of them have a legal right to do.

7) They deny that on any occasion they have filed claims with the Industrial Commission of Illinois for and on behalf of members without obtaining the member's permission, authorization or approval, and they deny that at any time M. J. Hanagan, attorney for United Mine Workers District 12, filed an application for adjustment of claim

for Elery Morse with the Industrial Commission of Illinois; without the consent, approval, authorization or knowledge of said Morse, and they say further that, even if true, such matter is immaterial to this case.

8) They admit that as an association they are not and cannot be licensed to practice law in the State of Illinois.

9) They deny that, except as above stated, they have offered, furnished, or rendered legal services and advice.

[fol. 10] 10) They deny the averments of Paragraph numbered (10) in the Amended Complaint.

11) They deny the averments of Paragraph numbered (11) in the Amended Complaint.

12) They deny the averments of Paragraph numbered (12) in the Amended Complaint.

13) They deny the averments of Paragraph numbered (13) in the Amended Complaint.

And the Defendants say that it appears from the face of the Complaint that the Plaintiffs are not entitled to the relief prayed, nor to any relief, wherefore they pray judgment dismissing the Complaint.

Joseph Shannon, and All Other Members of District
12 United Mine Workers of America, Defendants,
By: Edmund Burke, Their Attorney.

Proof of Service.

MOTION TO STRIKE AND FOR JUDGMENT ON THE
PLEADINGS—Filed July 28, 1964

Comes now, Joseph Shannon, a member of District 12 United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and come also, all the members of said association made parties

[fol. 11] hereto by representation, by Edmund Burke, their attorney, and move the Court to strike the averment of Paragraph numbered (7) seven of the Complaint as amended

"(7) That the Defendant has on occasion filed claims with the Industrial Commission of the State of Illinois for and on behalf of a member without obtaining the member's permission, authorization, or approval.

Elery D. Morse, East Walnut Limits, Canton, Illinois, a member of the United Mine Workers District 12, was injured on or about July 18, 1961, in the course of his employment in or around Canton, Illinois.

In March of 1962, Elery Morse retained the services of Claudon and Elson, Attorneys at Law, 21 West Elm Street, Canton, Illinois, to file his application for adjustment of claim in regard to his claim against the Midland Electric Coal Corporation with the Industrial Commission of Illinois and to otherwise represent him in this matter.

On or about June 28, 1962, Claudon and Elson filed an application for adjustment of claim for Mr. Morse with the Industrial Commission of Illinois in his claim against Midland Electric Coal Corporation, case #712133.

On July 23, 1962, M. J. Hanagan, Attorney for United Mine Workers District 12, filed an application for adjustment of claim for Mr. Morse with the Industrial Commission of Illinois in his claim against Midland Electric Coal Corporation, case #713647, without the [fol. 12] consent, approval, authorization or knowledge of said Morse case #713647."

for the reason that the same, even if true, is immaterial to the only issue in this case which is whether or not the members of District 12 United Mine Workers of America

are practicing law by employing the services of an attorney on a salary basis for the sole purpose of representing them and their dependents in cases, under the Workmen's Compensation Act, of injury and death arising out of and in the course of their employment as coal mine employees.

And the Defendants move, further, for judgment on the pleadings for the reason that the Complaint as amended is substantially insufficient in law and in support of this motion for judgment on the pleadings submit the following:

(1) The averment of Paragraph Numbered (6) six of the Complaint

"(6) That for many years Defendant has been engaged in the practice of law in Sangamon County and other counties in the State of Illinois in that in the course of providing services for members it has, and still does, employ an attorney on a salary basis for the purpose of representing its members with respect to claims they may have under the provisions of the Workmen's Compensation Act of the State of Illinois."

is not a statement of fact but a mere conclusion of the pleader.

(2) The Complaint as amended nowhere states a cause of action against the Defendants.

[fol. 13] (3) The Complaint as amended shows on its face that the Plaintiffs are not entitled to the relief prayed nor to any part thereof.

And the Defendants move for judgment on the pleadings in favor of the Defendants and against the Plaintiffs for the reasons above stated.

Proof of service and notice.

Order Nov. 5, 1964, denying motion to strike and for judgment on the pleadings.

Order November 5, 1964, motion to strike and for judgment on the pleadings denied.

MOTION BY DEFENDANTS FOR RE-CONSIDERATION OF ORDER
DENYING MOTION FOR JUDGMENT ON THE PLEADINGS—
Filed November 12, 1964

Come now, Joseph Shannon, a member of District 12 United Mine Workers of America, and also all members of the said District 12 made parties hereto by representation, by Edmund Burke, their attorney, and move the Court for re-consideration of its order of November 5th, 1964, denying their motion for judgment on the pleadings, and, as ground for this motion, show that interference by the State of Illinois, as prayed for by the Plaintiffs, with the employment by the Defendants of attorneys of their own choice to represent them and their dependents, in cases of injury and death arising out of and in the course of their employment, and under the Workmen's Compensation Act, [fol. 14] would violate Section 19 of Article 2 of the Constitution of the State of Illinois, as follows:

"Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay."

and also the rights guaranteed them by the First and Fourteenth Amendments to the Constitution of the United States.

Wherefore, Defendants respectfully ask the Court to re-consider its order of November 5, 1964, and allow their motion for judgment on the pleadings.

Joseph Shannon, and all other members of District 12 United Mine Workers of America, Defendants,
By Edmund Burke, Their Attorney.

Interrogatories filed August 3, 1964. By obvious error the recital in the transcript states these interrogatories

were filed August 3, 1965. The Clerk's file mark on same shows August 3, 1964. Proof of service shows same.

Objections to interrogatories that answers to the same would be irrelevant and immaterial.

Proof of service.

[fol. 15] Order of December 3, 1964, denying motion for reconsideration of order denying motion for judgment on the pleadings, also sustaining and denying certain objections to interrogatories.

ANSWERS TO INTERROGATORIES

Names and addresses of all officers of District 12.

Area of jurisdiction, Illinois and Iowa.

District 12 has approximately 14,000 members, 8500 working, 5500 retired.

Addresses of each office.

Names and addresses of officers, members and employees responsible for legal aid.

Local unions designate an officer or members to assist injured members to prepare and file with the compensation legal department for the attorney complete reports of the injury containing all material facts.

Stuart J. Traynor, Taylorville, Illinois, is the attorney employed to take care of Compensation cases.

Sometimes another member or officer of the Local Union, occasionally a District Executive Board Member, interviews the injured member, may be at the mine, the home of the injured man or of the officer or member who helped him with his accident report to the attorney. The extent of the interview is determined by the nature of the injuries disclosed by the report.

The application to the Industrial Commission for adjustment of the claim is prepared by the attorney at the office in Springfield or West Frankfort.

[fol. 16] Applications for adjustment of claim are sent to the Industrial Commission by the attorney or under his direction from the two offices.

The attorney, since his appointment, has filed 590 applications for adjustment of claim and the amount collected by petitioners was \$737,998.27.

The attorney has appeared at all Industrial Commission hearings.

No claims are settled by the attorney without benefit of hearing. All claims are set by the Industrial Commission for hearing and the claimant is notified to be present at the hearing to discuss any possible adjustment. This is done by the Arbitrator, the claimant and his attorney and the representative of the insurance company.

1318 applications were filed by M. J. Hanagan from January 1, 1961, to his death in 1963 and the amount collected by the petitioners was \$1,859,640.65.

The attorney handles all negotiations with the insurance companies.

Amount of compensation and expense paid to attorneys from June 1961 to November 1964.

Stuart J. Traynor (Jan. through Nov. 1964) \$11,366.66 expense \$1,497.60.

Interrogatories 34 and 35.

34. Did union members hire present attorney?

35. If answer to 34 is yes—enclose copy of union constitution, minutes of union meeting, resolution or appropriate document which reflects the fact that the union members hired present attorney.

[fol. 17] Answers to Interrogatories 34 and 35.

Yes.

The twenty-fourth annual convention of District 12, United Mine Workers of America, consisting of delegates elected by the members of each Local Union, convened at Peoria, Illinois, on February 18th, 1913.

The report of the Secretary-Treasurer made on that day stated, among other things, that the establishment of a legal department had become an actual necessity; that, in many instances, the interests of the members were being juggled and even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees. The report recommended that the District Executive Board establish a legal department. It further suggested and recommended that such establishment should not mean that members be required to accept its counsel if they desired the services of others.

On February 25th the Committee on Officers' Reports reported to the Convention as follows:

"We concur in the report of Secretary-Treasurer McDonald in establishing a legal department in connection with the organization, and recommend to the convention that the incoming executive board be instructed to establish such department."

Upon motion made and seconded the report of the committee was adopted.

On August 5th, 1963, at a meeting of the District Executive Board of District 12, duly called and held, consisting of the President, the Secretary-treasurer, and three [fol. 18] Executive Board members elected by the members of each Local Union, in his Board Member District, the action shown by the following record was had:

"The Executive Board of District 12, United Mine Workers of America, was called to order by Acting President Joe Shannon at 1:15 PM on Monday, August 5, 1963, with the following persons present: Acting President Joe Shannon, Secretary-Treasurer Edward H. Gibbons, and District

Board Members Gossett, Lisse and Ballard; Ruth Jesberg was Secretary to the meeting.

Acting President Shannon: Before we begin discussion of the grievance cases that will come before the meeting of the Joint Group Board tomorrow, we will have a short District Executive Board meeting.

As you know, William Hanagan was engaged temporarily to handle the Workmen's Compensation cases in District 12 following the recent death of his father, our attorney, M. J. Hanagan.

Several attorneys are interested in the permanent position to succeed Mr. Hanagan, and I would like your views and comments on these people and their qualifications.

General Discussion of applicants:

Board Member Lisse: I make a motion, Mr. Chairman, that you, as Acting President, be authorized and empowered to make arrangements with Attorney Stuart Traynor, Taylorville, Illinois, for the purpose of retaining him to handle the District 12 compensation cases.

[fol. 19] Board Member Ballard: I second the motion.
Motion Carried Unanimously.

Shannon: Since there is no further business to come before the Board today, we will adjourn this meeting and go on with our examination of the cases coming up tomorrow at the Joint Group Board.

Meeting adjourned at 2:10 PM."

Members and officers of each Local Union were informed of availability of present attorney by letter from the President of the District.

The attorney attends an office for the benefit of members at UMWA headquarters, Springfield, and at West Frankfort.

He has no regular schedule to be at either place.

Dues of each member have been \$5.25 per month since November 1st, 1964.

No portion of dues is allocated to pay attorney's salary.

Insurance companies send settlement drafts to the employer who delivers same to the employee and takes release.

All of the settlement or award is paid to the injured member.

The attorney has represented no member or officer or employee of District 12 except before the Industrial Commission.

No officer, member or employee of the District receives directly or indirectly any fees or the like out of settlement or awards.

[fol. 20] No officer, member or employee is compensated above his usual wages for handling claims or obtaining information in behalf of the attorney or the union.

Exhibits attached to answers to interrogatories.

Ex. "A-1" Heading of report of accident filed by Elery D. Morse who is mentioned in the amended complaint.

Report to Attorney on Accidents
Legal Department—U. M. W. of A.
District No. 12.

Read this carefully and when filled out mail to Legal Department, District 12, U. M. W. of A., 601 United Mine Workers Building, Springfield, Illinois.

1. See that notice of every accident and claim for compensation is made upon the company within 30 days. (In hernia cases notice and claim must be made in 15 days.)

2. Compensation is not due in injury cases until three weeks after the injury. Do not make this report until a reasonable time has elapsed after compensation is due, and then only after demand on the company has been made, and either no compensation is paid, or not a sufficient amount.

3. The purpose of making reports in injury cases is to bring to the attorney's attention cases where compensation is not paid when due, or where compensation is not adequate in amount, or where compensation payments are discontinued before it is proper so to do; or where compensation payments have been discontinued and there

yet remains compensation due for: 1—Temporary total, being time of inability to perform any work; 2—Medical, surgical and hospital services; 3—Partial incapacity, being the period when only partial earnings are possible; 4—Loss of a member, such as finger, toe, leg, hand, etc.; 5—Permanent disfigurement to head, hands or face; 6—Partial loss of the use of finger, hand, arm, foot or leg; and 7—Complete permanent disability.

4. Report all death cases not later than ten days thereafter.

5. It is useless to send these reports unless all questions are fully answered.

Ex. "A-2" Reverse side of report, used for fatal cases.

Ex. "B" Letter, Hanagan to all Local Officers and members.

Ex. "C" Letter, Shannon to all Local Officers and members.

Proof of service.

Motion by Plaintiff for leave to amend Complaint.

Notice to produce at taking of Traynor deposition all letters of agreement, contracts, etc., which evidence the employment of Stuart Traynor, Esq., by United Mine Workers of America, District 12.

[fol. 22]

DEPOSITION OF STUART J. TRAYNOR,
MAY 7th, 1965

I reside at Taylorville, Illinois. I am forty-six years old. I am an attorney at law, a graduate of St. Louis University. I graduated in June, 1950. I am admitted to practice in Missouri, Illinois, and the United States District Court. I am State Senator for the Fortieth District. My employment by the District 12 began in October, 1963.

My directions and authorization encompass representation of members in claims under the Workmen's Compensation Act. That is the total scope of my employment.

I receive a salary of \$12,400 a year.

There are no limitations upon the number of cases I am to handle during a calendar year. My salary is not affected by the number of cases.

I receive a mileage allowance of ten cents per mile for actual travel by automobile. If I make use of public transportation I am reimbursed whatever the expense is. I am also allowed my actual hotel expense.

I advance no money in connection with hearings before the Commission.

I am not required to do any work outside the State of Illinois.

The United Mine Workers do not require me to do any other kind of work.

I do not maintain any office except at Taylorville. I have office space, that is, a room where I can sit down for conferences and examination of reports, in Springfield.

In connection with claims filed with the Commission there [fol. 23] are employees of the District available to me in both the Springfield and West Frankfort offices. They are paid by the District.

Applications and settlement contracts are dictated by me to these employees.

A member gets assistance in filling out forms from either of these secretaries if he desires it.

No member is contacted by anyone for the purpose of having me represent him.

I think it is generally known that they have a lawyer available to them because that situation has existed ever since the inception of the Industrial Commission.

Most applications for adjustment of claim are signed out of my presence. A member signs a report of injury and submits it to either of the offices. In most cases I have not seen the injured employee before filing the application unless he happens to come into the Springfield or West Frankfort office when I happen to be there. I would see them if they came to my office in Taylorville which sometimes happens.

The injured employee is instructed that if he has had medical attention he should obtain a report from the doctor. The Act requires the employer to furnish me a copy of the report by a company doctor. Sometimes I suggest that the employee obtain additional medical aid.

Many of the petitioners come in and consult with me before the hearing date.

Unless he comes in, or unless I need and send for him, I would not see him until the hearing date.

I make a determination of what I think the case is worth according to the provisions of the Act.

[fol. 24] The final determination of the amount is made by the petitioner. If the amount offered by the Company is not satisfactory then a hearing is had.

The compensation is paid directly to the miner.

I have never received any compensation over and above what I receive as salary.

No one has ever told me they came to me with other business because I represented the miners.

I learned that the District needed an attorney for compensation cases and was told to see Mr. Shannon, which I did. Then I received the letter dated September 26th, 1963. This is the letter:

United Mine Workers of America
Office of the President
District Twelve
United Mine Workers Building
Springfield, Illinois
Area Code 217, 522-9691

(Emblem)

September 26, 1963.

Mr. Stuart Traynor
Attorney at Law
Taylorville, Illinois

Dear Mr. Traynor:

The District Executive Board has authorized the undersigned to make arrangements with you to handle, as attor-

ney, compensation cases for members of District 12 and their dependents who need and desire your services.

[fol. 25] If acceptable to you, the salary will be \$12,400 per year. You will also be allowed and paid reasonable expenses.

It will be your duty to see to it, so far as possible, with the help of secretaries in the Springfield and West Frankfort offices and officers of Local Unions, that no member or dependent loses his rights under the Act by reason of failure to avail himself of them in time. Also, to represent him before the Commission if he desires your services. If he is represented by other counsel you will immediately turn over his file to such counsel.

You will receive no further instructions or directions and have no interference from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent.

If this arrangement is agreeable to you kindly let me know at your early convenience.

Very truly yours,

Joe Shannon,

Joe Shannon,

Acting President.

JS:RJ

I have frequently suggested to them that they could employ other counsel if they wished.

The amount collected on claims filed by me is \$737,998.27 instead of the figure given in answer to Interrogatory 14 (d).

For the full year 1964 the number of claims filed was 416. The number concluded was 487 and the amount received \$528,885.12.

[fol. 26] Motion by Plaintiffs for leave to amend Complaint by deletion of paragraph seven (7).

Objection by Defendants to allowance of motion by Plaintiffs for leave to delete paragraph 7, for the following reasons:

1. The Court has heretofore ruled, on November 5, 1964, denying the Defendants' motion to strike the same, that the same is material to the issue in this case, which is, whether or not the members of District 12 are practicing law by employing the services of an attorney on a salary basis for the sole purpose of representing them and their dependents under the Workmen's Compensation Act in cases of injury and death arising out of and in the course of their employment as coal mine employees.

2. Investigation, precipitated by the averments in the complaint, discloses that Elery D. Morse referred to therein, is an elderly man who sustained a permanent partial disability; acting upon bad advice, he retained counsel who, well knowing that he had and was entitled to the free services of counsel provided by himself and his fellow employees, took, for themselves out of his award the sum of (\$1,795.00) One Thousand Seven Hundred Ninety-Five Dollars.

The averments of said Paragraph Seven should remain in the Complaint and the facts should be disclosed for the record as an apt illustration of the commercialism, and its attendant evils, the Plaintiffs are seeking to restore to the industrial accident field in the State of Illinois.

Proof of service.

[fol. 27] Order July 22, 1965, overruling objection to amendment of Complaint, allowing leave to amend Complaint and leave to amend answer.

Complaint amended by deleting paragraph 7.

AMENDMENT TO ANSWER—Filed July 9, 1965

Leave of Court having been first had and obtained, Defendants amend their answer to the Complaint herein by adding to Paragraph (6) of the said Answer, the following:

"And the Defendants say that their action in so employing an attorney was duly authorized by their District Executive Board on August 5, 1963, and by original authority

of the District Convention consisting of delegates elected by the members in each Local Union, at Peoria, Illinois, on February 25, 1913, and that the terms and conditions of such employment, which were accepted by the said attorney, are set forth in the following letter:

(Letter Shannon to Traynor dated September 26, 1963, shown in Traynor deposition.)

Court orders on motions for leave to amend Complaint and Answer.

MOTION FOR SUMMARY JUDGMENT

Come now the Illinois State Bar Association, an Illinois not for profit corporation, and Curtis F. Prangle, Bernard H. Bertrand, William Feehtig, Korean Movsisian, Henry [fol. 28] W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson, and Marshall A. Susler, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association, Plaintiffs, and, pursuant to Section 57 of the Illinois Civil Practice Act, moves this Court for an order of Summary Judgment in favor of the Plaintiffs permanently enjoining the Defendant, United Mine Workers of America, District 12, its agents and employees, from doing any or all of the following acts:

1. Giving legal counsel and advice.
2. Rendering legal opinions.
3. Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of the State of Illinois.
4. Practicing law in any form either directly or indirectly.
5. Advertising, advising or holding itself out to members and others as practicing law or as having a right to practice law.

6. Charging or collecting fees, commissions or payments or apportioning dues of members in any form or manner for any legal services whatsoever rendered or to be rendered by said defendant or its agents or employees to or on behalf of members and any other persons.

In support of said Motion, Plaintiff attaches thereto and makes a part hereof, (1) copy of Defendant's answer and [fol. 29] amendment to paragraph 6, (2) Interrogatories propounded to Defendant and its answers thereto, and (3) Deposition of Stuart Traynor, Esq.

Wherefore, the Plaintiffs move that this Court enter Order of Summary Judgment for the Plaintiffs as a matter of law and issue a permanent injunction restraining and enjoining the Defendant, United Mine Workers of America, District 12, as prayed for in this complaint.

Affidavit and proof of service.

Amendment to Complaint by deleting Paragraph 7.

MOTION BY DEFENDANTS FOR SUMMARY
DECREE—Filed August 6, 1965

Comes now, Joseph Shannon, a member of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and come, also, all members of said association, made parties hereto by representation, by Edmund Burke, their attorney, and move the Court for a summary decree in favor of the Defendants and against the Plaintiffs in the above entitled cause, for the reason that the Plaintiffs are not entitled to the relief prayed nor to any part thereof and that granting the same would be in violation of the rights of the Defendants protected by the First and the Fourteenth Amendments to the Constitution of the United States; and in support of this motion, Defendants make a part hereof, by reference, the Complaint filed herein and all

[fol. 30] exhibits attached to the motion for summary judgment; heretofore filed herein by the Plaintiffs.

Joseph Shannon, and All Other Members of District 12, United Mine Workers of America, Made Parties Hereto by Representation, By: Edmund Burke, Their Attorney, 217 South Seventh Street, Springfield, Illinois 62701, Telephone: 528-7375.

I hereby certify that the foregoing motion is not interposed for delay and that in my opinion the same is well founded in law.

Edmund Burke.

Notice and proof of service.

ORDER—September 7, 1965

This matter coming on for hearing on the motion by the plaintiffs, Illinois State Bar Association, et al., for a summary judgment in their favor, and upon the motion by the defendants, United Mine Workers of America, District 12, for a summary decree in their favor, the parties being represented by their respective attorneys, and this Court having considered said motions, affidavits and exhibits sup-[fol. 31] porting and opposing the same, including the pleadings, interrogatories, answers to interrogatories and discovery deposition of Stuart Traynor, Esq., having heard arguments of counsel, and being fully advised in the premises;

Now, Therefore, this Court makes the following findings of fact and conclusions of law:

1. that there is no genuine issue as to any material fact in this cause
2. that as a matter of law the defendants have been and are engaging in the unauthorized practice of law by retaining an attorney (Stuart Traynor, Esq.) on a salary basis to represent their members with respect

to claims that they may have under the provisions of the Workmen's Compensation Act of the State of Illinois.

It Is Hereby Ordered, Adjudged and Decreed that

1. the motion for a summary decree of the defendants, United Mine Workers of America, District 12, is denied and overruled

2. the motion for a summary judgment of the plaintiffs, Illinois State Bar Association, et al., is granted and sustained

3. the defendants, United Mine Workers of America, District 12, its agents and employees are hereby permanently restrained and enjoined from doing any or all of the following acts:

1. Giving legal counsel and advice

2. Rendering legal opinions

3. Representing its members with respect to Workmen's Compensation claims and any and all other claims [fol. 32] which they may have under the laws and statutes of the State of Illinois

4. Employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois.

5. Practicing law in any form either directly or indirectly.

Enter:

Creel Douglass, Judge.

NOTICE OF APPEAL—September 16, 1965

United Mine Workers of America, District 12, Defendants-Appellants in the above entitled cause, hereby appeal to the Supreme Court of Illinois from the order and decree of the Circuit Court of the County of Sangamon, Illinois, entered in said cause) on September 7, 1965, in favor of Plaintiff-Appellee and against the above named Defendants-Appellants, denying and overruling the Motion of Defendants-Appellants for a summary decree, allowing the Motion of Plaintiff-Appellee for summary judgment, and restraining and enjoining Defendants-Appellants, their agents and employees from doing any or all of the following acts:

1. Giving legal counsel and advice
2. Rendering legal opinions
3. Representing its members with respect to Workmen's Compensation claims and any and all other [fol. 33] claims which they may have under the laws and statutes of the State of Illinois
4. Employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois
5. Practicing law in any form either directly or indirectly.

Defendants-Appellants pray that said order and decree may be reversed and that Plaintiff-Appellee's Motion for summary judgment be denied and the injunction dissolved; and that Defendants-Appellants' Motion for summary decree be allowed and the Complaint dismissed.

Edmund Burke, Attorney for Defendants-Appellants,
217 South Seventh Street, Telephone: 528-7375,
Springfield, Illinois 62701.

Proof of service.

PRAECIPE FOR RECORD—September 21, 1965

To: The Clerk of the Circuit Court of Sangamon County, Illinois:

You are hereby requested to prepare and make up a complete transcript of the record of your Court in the above entitled cause, to be used on appeal to the Supreme [fol. 34] Court of Illinois, including a placita, all pleadings, all motions and orders, all papers of record including Interrogatories and objections and answers thereto, depositions, the notice of appeal and proof of service thereof, together with your certificate that the same is a complete transcript of all proceedings had in your Court in said cause.

Filed and served September 21st, 1965.

Appeal Bond in the sum of \$1,000 approved by the Court and filed September 21st, 1965.

Certificate of Clerk.

Respectfully submitted,

Edmund Burke, 217 South Seventh Street, Tel. 528-7375, Springfield, Illinois, Attorney for Defendants.

Gillespie, Burke & Gillespie, 217 South Seventh Street, Springfield, Illinois, Of Counsel.

[fol. 35]

[File endorsement omitted]

[fol. 36]

No. 39,642

IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

Appellants' Brief—Filed December 10, 1965

[fol. 37]

The Jurisdictional Ground for Direct Appeal

The case involves a question arising under the constitution of the United States.

Illinois Supreme Court Rule 28-1 (A).

The question is whether the rights of the Defendants to engage in concerted activities for the purposes of their mutual aid and protection are protected by the First and the Fourteenth Amendments to the Constitution of the United States.

[fol. 38]

Points and Authorities**I.**

The restraining order is violative of the rights of the Defendants to engage in concerted activities for the purposes of their mutual aid and protection.

Labor Management Relations Act, 1947, Title 29 USCA 157.

This Section of the Act is applicable even though no union activity is involved, and no collective bargaining is contemplated.

NLRB v. Phoenix Mutual Insurance Co., 167 Fed. (2nd) 983, at page 988. Certiorari denied 335 U. S. 845, 93 L. Ed. 395.

The First and Fourteenth Amendments to the Constitution of the United States protect, and a State, under its power to regulate the practice of law within its borders, may not infringe the rights of the Defendants to engage in the concerted employment of an attorney for the mutual protection of themselves and their dependents from the consequences of injury and death arising out of and in the course of their employment.

Brotherhood of Railroad Trainmen v. Virginia ex rel.,
377 U. S. 51, 21 L. Ed. (2nd) 89, 93, 84 Sup. Ct.
1113;

NAACP v. Button, 371 U. S. 415, 429, 9 L. Ed. (2nd)
405, 83 Sup. Ct. 328.

[fol. 39]

II.

A judgment or decree must be supported by a material fact or facts in the record.

The National Can Company v. The Weirton Steel Company, 314 Ill. 280, 285.

[fol. 40].

IN THE SUPREME COURT OF ILLINOIS

No. 39642

[Title omitted]

MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE, A MOTION FOR AN EXTENSION OF TIME FOR PLAINTIFFS TO FILE THEIR BRIEF AND ADDITIONAL ABSTRACT UNTIL FEBRUARY 15, 1966—Filed December 30, 1965

Come now the plaintiffs, the Illinois State Bar Association and its Committee on the Unauthorized Practice of Law, by their undersigned attorneys and respectfully move this Honorable Court to dismiss the appeal of the defendants, United Mine Workers, District 12, which appeal the defendants are attempting to bring directly to this Court

from the Circuit Court of Sangamon County under Rule 28-1(a) of this Court. The alleged grounds for this appeal is the claim of the defendants that there is present in this case a constitutional question; namely, whether the rights of the defendants to engage in concerted activities for the purpose of their mutual aid and protection are protected by the First and Fourteenth Amendments to the Constitution of the United States. It is the position of the plaintiffs that there has been a total failure on the part of the defendants to present to this Honorable Court a question arising under the Constitution of the United States based on the facts of this case.

In The Alternative, the plaintiffs respectfully move this Honorable Court that, if this Motion is denied, they be [fol. 41] given until February 15, 1966, to file their additional abstract and brief.

Respectfully submitted,

Bernard H. Bertrand, 234 Collinsville Avenue, East
St. Louis, Illinois, Telephone: A.C. 618-BR 1-5100.

David J. A. Hayes, Jr., 901 South Spring Street,
Springfield, Illinois, Telephone: A.C. 217-528-6408.
Attorneys for the Plaintiffs.

December 29, 1965.

[fol. 42]

IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DENYING PLAINTIFFS' MOTION TO DISMISS—
Filed January 14, 1966

And now, on this day, the Court having duly considered the motion by appellee to dismiss this appeal, and being now fully advised of and concerning the premises;

It Is Hereby Ordered that the motion by appellee to dismiss this appeal be, and the same is, denied.

[fol. 43] [File endorsement omitted]

[fol. 44]

No. 39642

**IN THE
SUPREME COURT OF THE STATE OF ILLINOIS**

March Term, A.D. 1966

[Title omitted]

Additional Abstract of Record—Filed February 10, 1966

Deposition of STUART J. TRAYNOR.

Q. Will you state your name please?

A. Stuart J. Traynor.

Q. Where do you reside?

A. Taylorville, Illinois.

Q. What is your age?

A. Forty-six.

[fol. 45] Q. What is your business or profession?

A. Attorney at Law.

Q. Of what school are you a graduate of, referring particularly to the law school?

A. St. Louis University.

Q. And when did you graduate?

A. 1950—June 1950.

Q. And of what State Bar Association are you a member—I don't mean State Bar Associations, what bars have you passed, what State Bars?

A. I am admitted to practice in Missouri and Illinois and I am authorized to practice before the Federal District Court.

Q. Have you been admitted to practice before any higher court other than the Federal District Court?

A. No, sir.

Q. In addition to the practice of law what other job do you hold of a public nature?

A. I am a State Senator in Illinois.

Q. And of what particular district?

A. The 40th District.

Q. That includes the town of Taylorville, is that correct?

A. That is right. That is Christian, Shelby and Fayette Counties.

Q. Now directing your attention to the lawsuit filed by the Illinois State Bar Association and members of the [fol. 46] unauthorized practice of law committee against United Mine Workers of America District 12, answers to interrogatories presented to us have indicated that you presently are employed by the United Mine Workers of America District 12, is that correct?

A. That is correct.

Q. And when did that employment commence?

A. In October of 1963.

Q. What was the nature of that employment? What was the purpose? What were you to do for the United Mine Workers of America?

A. My directions and authorization encompasses the representation of members of the District 12 in claims for Workmen's Compensation Benefits under the Illinois Workers Compensation Act.

Q. And is that the total scope of your employment for the United Mine Workers of America to represent employees only before the Workmen's Compensation Board, is that right?

A. Yes, sir.

Q. Or should I say the Industrial Commission, which ever way you want to call it.

A. Right.

Q. Do you receive a salary from the United Mine Workers of America District 12?

A. Yes, sir.

Q. What is that salary?

[fol. 47]. A. \$12,400.00 a year.

Q. And are there any limitations with respect to the number cases that are to be handled by you during a calendar year?

A. There are no such limitations.

Q. You are then responsible or obligated to represent employees, no matter how many may have claims during any particular year, is that right?

A. That is right.

Q. Does your salary increase or decrease based upon the number of cases that you may handle?

A. No. The number of cases has nothing to do with my salary.

Q. So that if you only had one case in one year or five hundred cases your salary would be the same, is that correct?

A. Yes, sir, that is correct.

Q. Now do you receive any additional compensation or remuneration from the United Mine Workers of America District 12 other than that salary?

A. Yes.

Q. Will you tell us what that is?

A. I receive a mileage allowance of ten cents a mile for actual travel by automobile or if I—ah—make use of some other public transportation facility I am reimbursed whatever that expense is and I am also allowed my actual hotel expense.

[fol. 48] Q. Now in connection with filing claims before the Industrial Commission is there any filing fee required?

A. No.

Q. Do you advance any money on behalf of the United Mine Workers or the employees in connection with any hearing that is had?

A. No, sir.

Q. Are there any other types of unusual expenses that you can think of that you may also get reimbursed by the Mine Workers other than what you have told us?

A. No.

Q. Does the United Mine Workers ever require you, as part of your employment for them, to do any work outside of the State of Illinois?

A. No.

Q. Does the United Mine Workers require you, as part of your employment with them, to do any other type of work for them other than the representation of its members who have been injured and who have a claim under the Workmen's Compensation Act of the State of Illinois?

A. No, with the exception that there might on some occasion be some kind of an incidental consultation that they might have with me just seeking advice of some kind.

Q. Would you explain for instance, an example of such a thing?

[fol. 49] A. I can't remember one right now.

Q. Well—

A. But I don't mean—what I mean to say Mr. Bertrand if Mr. Shannon, or one of the Board Members or one of the Members even or someone else, should make inquiry of me as to something that was personal to them I would answer them, of course.

Q. I see. However, you do not consider yourself as a person hired, under the arrangements that you have, to give them any advice on the running of the United Mine Workers District 12, is that correct sir?

A. That is correct sir.

Q. Or any of its internal problems, is that true?

A. That is true.

Q. Your main function, as I understand by virtue of the payment given you by the United Mine Workers, is to represent its individual member when that person is hurt in a mining accident wherein he would qualify under the Workmen's Compensation Act of the State of Illinois, is that correct?

A. That is correct.

Q. All right. In representing an individual miner before the Workmen's Compensation Board or the Industrial Commission do you—strike that.

[fol. 50] Do you maintain offices other than at Taylorville, Illinois for your services with the United Mine Workers?

A. I do not maintain any office Mr. Bertrand.

Q. Does the Mine Workers Union maintain office space for you in any of their locations?

A. Yes. I have office space in the Springfield office. I can't say that I have office space in the West Frankfort office but I make use of the West Frankfort office.

Q. And when we are talking office space it is, I take it, meaning room in which you yourself can sit is that correct?

A. Yes, sir.

Q. It is reserved for you personally, is that correct?

A. That is correct.

Q. All right. Now in connection with the claims that may be filed with the industrial commission are there employees of the United Mine Workers available to you in both the Springfield and West Frankfort office?

A. Yes.

Q. For preparation of applications for adjustment of claim settlement contracts and all the necessary legal papers that must be filed with the Compensation Commission?

A. Yes there are employees available to me.

[fol. 51] Q. And are they paid by you or are they paid by the United Mine Workers District 12?

A. No they are paid by United Mine Workers of America District 12.

Q. Will you tell me the names of—strike that. When we talk about people being available to you are we stating that they actually do work of the nature we were talking of, preparing these documents, and there are some specific person in each of these 2 offices that do this type of work, person or persons? In other words of preparing application for adjustment or claims settlement contracts and so forth?

A. Sir so that I understand you correctly do you mean independent of my work or independent of anything that I might do? I am thinking Mr. Bertrand—

Q. Either way.

A. Well—

Q. In other words whether you might dictate it to them or you don't?

A. That is the only way it is done generally speaking is that they are dictated by me to the secretary and—who are employed in the Springfield office and the secretary who is employed in the West Frankfort office.

Q. All right. Now when a person is hurt let's say in the West Frankfort—which I imagine there must be a number of counties that get into that particular office as opposed to the Springfield area?

[fol. 52]. A. Yes.

Q. And you are not available, and that employee would come into the Mine Workers Office at West Frankfort and is he presented the necessary forms to fill out with the assistance of a secretary or some personnel down there other than yourself?

A. When you say an employee I presume you mean a member?

Q. A member. I am sorry I should mean a member, yes.

A. Yes, sir—yes they get—a member of the union gets assistance from—if they request it—from the secretaries in both the Springfield and the West Frankfort office if they request it to help them fill out a form, yes.

Q. All right. Now let's take the circumstance of a man being injured in a mine which would qualify him to make a claim under the workmen's compensation act against a coal company. Is he contacted in advance after this incident by representatives of the United Mine Workers for the purpose of having you represent him before the Industrial Commission?

A. No, sir.

Q. How is he notified that he has available to him your services?

A. Well—if he contacts an office of the local union he will be advised that this—that my services are available to him.

[fol. 53] Q. Is it not a generally known fact among the members of the union by virtue of previous distribution of information that they have a lawyer available to them for the purpose of presenting their claim before the Industrial Commission?

A. Oh—I think that is probably generally known because it is a situation that has existed almost since the inception of the Industrial Commission.

Q. And whether or not they know you personally they do know that there is a lawyer available to them, is that right?

A. I would assume they would know that, yes.

Q. And for that matter only when there is a case handled by you do you get to know that individual, is that true?

A. That is true.

Q. You would have no reason to have any contact, personal or otherwise, with miners down in West Frankfort Area when you are situated and have your practice in the Taylorville Area, is that true?

A. I don't understand the question.

Q. You wouldn't have any contact so that a person would seek you out as an individual lawyer in the West Frankfort Area because of its distance from your normal area of practice, isn't that true?

A. Well—I—I think I understand what you mean, but I couldn't correctly state that I wouldn't on some occasion—

[fol. 54] Q. No—no—

A. —have a client from West Frankfort just because I live in Taylorville.

Q. No, but in general you would not be one of the lawyers in that area they would be familiar with, is that true?

A. No.

Q. You might have an occasional client in that area but you wouldn't have access to all members of the United Mine Workers in view of the fact you have been hired by United Mine Workers to represent them?

A. I think I understand what you mean. I am not going to shut myself off from clientele in West Frankfort. Mr. Bertrand.

Q. I am not trying to say you are shutting your office off but the normal thing would be you would not have the exposure to represent them as you would—

Mr. Burke: I object to that question because it is entirely unrelated to the development of anything pertaining to the issues of this case whether Mr. Traynor is practicing law or not.

Q. Now these applications, are they signed by the member in your presence or are they signed before you ever see that they have an application filed?

A. No, most of them are signed out of my presence.

[fol. 55] Q. All right. And what is the operation procedure about getting the particular application to your attention and also to the—to be filed with the Industrial Commission? What is the procedure there?

A. Well—when you say application I presume you mean application for adjustment of claim?

Q. Application for adjustment of claim, yes.

A. The member if he contacts his—if some member of the local union or else he should come into either the West Frankfort or Springfield offices would be furnished with the form on his—at his request which is entitled Report to Attorney and he would then complete that form, sign it and it would be sent in to either the Springfield Office or the West Frankfort Office as the case might be and then the case is filed from that form.

Q. I see. Then am I correct from your answer that it is not necessary for the injured member to come into either these two offices? He may obtain the report to the attorney right at his mine I suppose through his local representative or steward or whatever you might call them, is that it?

A. Yes.

Q. And he would fill it out and then send it in to either of two branches, is that it?

A. Yes.

Q. To either the Springfield or West Frankfort office?

A. Yes.

[fol. 56] Q. Then even without a man present a secretarial job is accomplished filling out the form, is that correct?

A. Yes.

Q. Now when does the man—let me ask you this, in an application for adjustment of claim is it necessary that the injured man sign same?

A. After he—when he files the report to attorney he has authorized me to sign it on his—on his behalf.

Q. Do you have with you—do you have a copy of such report to attorney?

A. I don't have one with me, I think there is one—

Q. Is one attached here?

A. There is one attached to the answer to interrogatory.

Mr. Burke: There is answers made by this so and so brought in by you over at Canton.

Mr. Hayes: Yes, here it is.

Mr. Bertrand: I see. All right.

Mr. Burke: Exhibit A I think it is.

Mr. Bertrand: All right.

Mr. Burke: That is our friend Mr. Moore that you want to take out of the case now. I want him to stay in.

Q. This report is in no fashion an employment contract between the man and yourself, isn't that true? It is merely [fol. 57] a report to you as the hired attorney of the United Mine Workers of an accident and various questions relate to that accident, is that right?

A. Well—I am not going to make any such conclusion Mr. Bertrand because I presume that the man when he files that report with me is—that it constitutes a request that his case be filed with the Industrial Commission.

Q. May I ask if you can find any language in the report to attorney that in anyway instructs you to file such a claim or hires you to do so as an individual? And I am showing you now the Exhibit which was attached to the answers to interrogatories, Exhibit A, which has in its beginning the words Report to Attorney on accident legal department—UMW of A District 12. It has some printed instructions numbering a total of five in front.

A. No, I don't think there is any such specific language in the report.

Q. All right, thank you, I think we determined earlier that the application for adjustment of claim—of the record.

Whereupon there was then had an off the record discussion.

Q. Does not require the man's name. It is signed by the attorney, is that correct?

A. The application for adjustment of claim?

Q. Yes.

A. Yes, that is true.

[fol. 58] Q. And his name is merely typed in there so that the Industrial Commission gets the necessary information of the party who is injured and who is the respondent coal company involved, is that it?

A. Yes, sir.

Q. All right. Now after you have received the report and the local office has been forwarded the application for adjustment of claim do they send the application of adjustment of claim to you to file with the Industrial Commission or the—do the respective two offices send it on to the Industrial Commission?

A. No, they send them on.

Q. They send them on?

A. Directly to the Industrial Commission.

Q. Is your signature required or is a person authorized to sign your name on these forms?

A. Yes.

Q. Do you authorize a person in either office to sign your name so this can go forward and be expedited?

A. Yes. The secretaries are authorized to do that.

Q. All right. So you at the time of application of adjustment of claim filing have in most instances not seen the injured employee, is that correct?

A. That is correct.

[fol. 59] Q. When is the first time that you see the injured employee in the general run of cases I mean? I can understand there might be exceptions but I am talking about the general run of the cases?

A. Well—it depends. If the injured employee comes into the office of course I am going to see him prior to his—to the hearing on his case.

Q. Now we are talking about the office, will you elaborate on that?

A. Either Springfield or West Frankfort office when I have occasion to be there.

Q. You do not consider the office so far as you are concerned your law office in Taylorville?

A. No—no.

Q. You are talking only about United Mine Workers office where you are working for them at a yearly stipend?

A. Yes, that is correct but I would see them if they come in the Taylorville office which sometimes happens.

Q. Because some of them live in that area, true?

A. Yes.

Q. All right. Do you in working up a case for its presentation to the Industrial Commission it is my understanding that the major interests of course is medical isn't that correct?

A. Yes.

[fol. 60] Q. Medical. And do you make the arrangements for the obtaining of reports from doctors or is this done by the local offices processing the claim before—after it has been filed?

A. Neither.

Q. Tell me how it is done.

A. If it is done it is done by the injured workman—by the petitioner.

Q. He will—is he instructed to get these reports to you or what is it—how is it done?

A. He is instructed that if he obtains any medical assistance or a report arising out of medical assistance that he has received from that accident that it would be helpful to me in presenting his case if I could have that made available to me.

Q. In these cases the respondent coal company also desires medical examination of course of the injured workman too, isn't that true?

A. In almost every instance.

Q. And that will be by their own doctor of course?

A. Of course.

Q. And you receive—

A. Excuse me, as well as the petitioner.

Q. Well, of course he will have already have had some immediate need for a doctor before he got in to you—filed [fol. 61] his report of accident isn't that true? In most instances he has already seen a doctor because of the injury?

A. Yes, but generally it is a doctor furnished by the respondent coal company.

Q. I see. Do you require them under those circumstances where the respondent coal company has furnished him medical assistance that they furnish you with a report?

A. The Workmen's Compensation Act provides they are required to furnish me one on request.

Q. All right. In developing the man's claim so that he can—so that he can appear or so that when he appears before the industrial commission arbitrator do you only in certain cases seek other medical—strike that.

Does the man only determine whether or not he gets other medical attention other than the company furnished doctor or do you on occasion recommend that he seek other medical attention or other medical advice?

A. I—I will on occasion suggest that perhaps in order to be properly prepared that he seek other medical attention. Sometimes that is—that suggestion is made to him because we feel that it would be helpful in developing the case and sometimes we feel that maybe he hasn't had adequate medical attention.

Q. And is this done by you individually or is it done without even consulting you by these various representatives [fol. 62] tives in the two offices in Springfield or West Frankfort?

A. No, I think that that would only be done by myself.

Q. All right, okay. Now when a case is ready to be presented to an arbitrator of the Commission, does an injured

employee appear before the arbitrator at any time? Is there any time when an injured employee appears before an arbitrator without you present?

A. I don't think there is anytime when they would do that.

Q. All right. You appear, in your judgment, at all times at least since you have been hired, is that correct?

A. Yes, sir.

Q. And is it quite possible that the major number of persons who appear at that time are seen by you for the first time personally at the time of the arbitrator's hearing?

A. No I don't think that that is true.

Q. What is your practice in connection with preparing for appearing before the arbitrator on a number of cases? Please understand that I realize that there are hearings in certain locations.

A. Yes.

Q. And that there are a number of miners going to appear on that particular day before an arbitrator and of [fol. 63] course you are there to present their matter. Now what is the procedure that you follow in say for instance going down to DuQuoin?

A. Uh-huh.

Q. And appearing. Tell me what you do with respect to say the five or ten people who are going to be before the arbitrator on that specific day?

Q. Well—it is generally known in the—in the—in Southern Illinois that I am available—I will be in the West Frankfort office on certain days and it is quite a regular custom for the petitioners in these cases to come into the West Frankfort office and consult with me prior to his hearing date. Now I am not saying all of them do that but many of them do.

Q. Do you send out any specific instructions to them to make this advance appearance setting it before you—or with you?

A. No I don't send any specific instructions.

Q. So that if a person did not—strike that.

The only thing that a man would get then, that is an injured miner, would be a notice to appear before the Arbitration Commission on a certain day at a certain town, is that right? That would be—he would receive such a notice?

A. Generally speaking that is correct.

Q. And if he did not desire to appear at either West Frankfort or Springfield office at some time prior to that time when you would be available under a schedule then [fol. 64] the first time that you would see him would be the day of the hearing, is that true?

A. You mean if he did not choose to come in?

Q. Yes.

A. To either the Springfield or West Frankfort office?

Q. Yes.

A. Prior to that?

Q. Yes.

A. I wouldn't see him prior to the hearing day.

Q. The first time would be the day of the hearing—at the hearing?

A. Unless I needed him—unless he come in either the Springfield or West Frankfort office.

Q. You then prepare your representation or presentation of his claim from the file that you developed in the interval of time from the application for adjustment of claim filing or report to attorney to the date of the hearing, is that true?

A. Well—from the file and examination of the petition.

Q. Well, now that examination, are we talking about a doctor's examination or yours?

A. No, mine.

Q. All right. Okay. Then as I understand it the compensation act has certain percentages for values of injuries [fol. 65] of various parts of the body, true?

A. Yes, sir.

Q. You then make a determination of what you think the case is worth on percentage values, is that true?

A. Yes, sir.

Q. And I take it at that time you then consult with the attorney for the respondent coal company to see what his interpretation of the value is, is that correct?

A. Exactly.

Q. And this is sort of a pre-hearing negotiation session, is that right?

A. That is correct.

Q. And if you are satisfied with the amount that the respondent coal company representative is willing to pay for the particular injury that you observed and you talked to the man about and whether he is still having difficulties, I suppose, you either settle it right then and there or at least by agreement you settle it or else you have a hearing, is that true?

A. The final determination is made by the Petitioner.

Q. I realize—yes, that is true. I should have—you make a recommendation to the individual miner that is hurt, is that correct? Based upon what you—your recommendation [fol. 66] and whether or not they reach close to or meet your recommendation, is that right?

A. That is right.

Q. All right. Now if the amount is not satisfactory then you have a hearing, is that true?

A. That is true.

Q. If the amount is satisfactory you present the—that to the Commission in another form, is that right?

A. Yes, sir.

Q. These are—are these—this is sometimes known as settlement contract, I believe, or something like that. When you do reach agreement what are the documents that you use—when you do reach an agreement or—what is the procedure?

A. It depends on what the respondents request. If the respondent requests a settlement contract then, of course, it is done by way of settlement contract. If the respondent feels that the—that the sum that has been agreed upon has accrued they sometimes feel that there is no need for a settlement contract and we just furnish them with a dis-

missal and, of course, they by law are required to file a final report with the Industrial Commission disclosing all of the—all of their payments.

Q. All right. Do you—now when the—a settlement has been reached and money is to be paid to the individual [fol. 67] miner, does that money—is that money paid by draft wherein you are included as a payee on that draft?

A. No.

Q. Do you receive the draft for the purpose of forwarding on to your—to the injured miner?

A. Hardly ever. I can't recall ever—that ever having happened.

Q. In other words it is paid directly to the miner, is that right?

A. Yes.

Q. Whatever the agreement may be?

A. Yes.

Q. All right. Now in the course of any particular member of the United Mine Workers District 12 hearing or procedure at the end of it have you ever received compensation over and above the salary that you are paid by the United Mine Workers District 12?

A. No.

Q. Now in connection with representing the miners and as an off-shoot of it, have you ever had any of these men whom you have represented and have concluded their claim come to you as an individual lawyer for other legal services?

A. As a result of having represented them?

Q. Yes.

A. Before the—

[fol. 68] Q. By virtue of the contact that you had with them as a miner.

Mr. Burke: Now that question is objected to. That hasn't anything to do with the question whether District 12 is practicing law or not. Someone comes to him after the conclusion of a case and employs his services privately that is a different matter.

Mr. Bertrand: Will you answer, Senator, regardless of his objection I am still entitled to an answer, then we can argue about it later.

A. I don't know.

Q. You don't know. Why don't you know may I ask?

A. I don't just have any way of knowing. No one has ever told me they came to me because of that.

Q. Have you in the past since September 26th, 1963, have you represented any miners in your private practice of law?

A. Oh—I think I have, yes.

Q. Have you represented any miners outside say for instance your immediate three county area?

A. No.

Q. All right. I can understand that.

A. I don't remember any.

Q. All right. In other words no one from the West Frankfort area has hired you for any private purposes?
[fol. 69] A. No.

Q. What in general, may I ask, were the type of work you might have done for miners in your area as a private practitioner?

A. Generally speaking I think it would probably be in connection with probate matters more than anything else.

Q. All right. Have there been many or just a few?

A. I—that would be very—relatively few.

Q. Now interrogatories were served upon the United Mine Workers District 12 and answers were supplied by Mr. Shannon who, as I understand it, is President of the United Mine Workers District 12, or was at the time these were answered. Is that correct?

A. Yes, he was then and now is.

Q. I see. Now a specific question was asked, Number 14, which reads as follows: "Since the appointment of the present attorney how many applications for adjustment of claims has he filed before the Industrial Commission." And we were, of course, at that time referring to you, is that correct Mr. Traynor?

A. Yes, sir.

Q. And it is my understanding since the appointment you filed 590 applications at the time counsel answered, is that—

A. I think that is correct, yes.

[fol. 70] Q. You yourself did not compile the information, one of the girls in the office of the United Mine Workers compiled it, is that correct?

A. That is correct.

Q. From their records which they keep, is that true?

A. Yes.

Q. Is it a fact, sir, your yourself don't keep the records of these injured miners? You only keep them while they are active, is that true? I mean you turn them into the United Mine Workers or they keep a duplicate file or how is it worked?

A. No, they are returned to either Springfield or West Frankfort office and they are kept there.

Q. The second part of that question: "How many have been closed." And it lists the number of 637 which, of course, is in excess of 590 you have filed. Now will you explain that figure?

A. You mean why there is—

Q. The difference in the figures.

A. There are always a number of these cases that are pending over a period of time and there had been quite a large number of these that had accumulated when I was hired because of the fact that my predecessor, Mr. M. J. Hanagan, had been in ill health for a period of time and there was a number of these that he hadn't—he hadn't closed as many cases as he normally would have.

Q. And the files then were files of the United Mine Workers District 12 as opposed to Mr. Hanagan's files, [fol. 71] is that right? I mean they were turned over to you when you accepted this appointment, is that right?

A. Yes.

Q. Although they were initialed by Mr. Hanagan, Mike Hanagan, or by his son Bill?

A. Yes.

Q. Upon your appointment all of them became your responsibility, is that true?

A. Yes.

Q. And you have carried on those and either have concluded those by this time or are in the process of concluding any that might still be pending, is that true?

A. That is right.

Q. Now in answer to another interrogatory it shows how many claims were settled by present attorney with insurance companies without benefit of hearing on claim and answer reads in part no claims are settled by attorney without benefit of hearing. Now that isn't completely accurate, is that true? In the sense that the settlement or agreed settlement is reached and then settlement is presented for approval, is that it?

A. That is the procedure.

Q. That is the procedure.

Mr. Burke: I object to that question. That is a misleading question. Read that question again.

[fol. 72] Mr. Bertrand: I will be glad how many claims were settled by the present attorney with insurance companies without benefit of hearing.

Mr. Burke: Without benefit of hearing. Everybody has the benefit of a hearing if they want it.

Mr. Bertrand: We are differing about hearing.

A. We are being technical about what constitutes a hearing.

Mr. Bertrand: Off the record.

Whereupon there was then had an off the record discussion.

Mr. Bertrand: I believe that is all the questions I have.

Examination by Mr. Hayes:

Q. Mr. Traynor when did you first learn that the United Mine Workers District 12 was looking for a legal counsel in this field and how did you learn about it, as best you can remember?

A. Having been associated or having been involved in— in the Workmen's Compensation matters over a period of years it has been my—it has been necessary for me to attend hearings before the arbitrator for the Industrial Commission frequently and—ah—this is just information that just kind of becomes public knowledge insofar as the people who work—who do this kind of work are concerned. I don't know when or how I found out really.

Q. Probably sometime in 1963?
[fol. 73] A. Yes.

Q. What was the first official contact with the Union about this and how did it arise?

A. Oh—I think probably in July or August of 1963 when the District Board Member who lives in Kincaid, Illinois told me that Mr. Shannon would like to talk to me about this.

Q. Did you subsequently talk to Mr. Shannon?

A. Yes.

Q. What was discussed at this meeting between you and Mr. Shannon?

A. That it had been necessary for them—that they were hiring an attorney to carry on the work that Mr. Hanagan had previously been doing.

Q. Did you tell Mr. Shannon that you were interested in the job?

A. Yes.

Q. What next occurred in the employment trend?

A. Well—the next thing that occurred I think was when I got the letter from Mr. Shannon advising me that I had—that I had been hired as a result of the action taken by the District 12 Board.

Q. That would be this letter of September 26, 1963, signed by Mr. Shannon?

A. Yes, sir.

Q. Did you ever appear in furtherance of this employment [fol. 74] before the union membership or at a Union Board Meeting?

A. I am sorry I didn't understand the question.

Q. Excuse me. In furtherance of your securing this job did you ever appear before the Union or the Union Board at which your qualifications for the job were discussed or acted upon by either the Board or the Membership?

A. Well—I appeared before Mr. Shannon and the Board Members. I don't know that all of them were present at the time. It seems to me that they were. And then the Board took further action after that but I wasn't present at the time this action was taken.

Q. Would you characterize that as sort of an interview.

A. Yes.

Q. In which they were trying to ascertain your qualifications and interests?

A. Yes, I would say so.

Q. And subsequent to that the next thing you knew was this letter from Mr. Shannon?

A. Yes.

Q. When you had that original conference with Mr. Shannon that you mentioned they were interviewing a number of attorneys for this position or was there any conversation along that line?

[fol. 75] A. I believe that he might have mentioned that there had been other applications or applications other than mine.

Q. Did you ever fill out a formal application?

A. No.

Q. This was all oral?

A. Yes.

Q. Now I believe you testified—you testified that you saw at least some of the miners prior to the filing of the adjustment of claim form or consulted with them otherwise. Did you ever or were there occasions when you were talking to them that you suggested to them or advised them that they could seek other counsel if they did not want your counsel?

A. Oh, yes, definitely.

Q. Did you suggest at all that this was beneficial, non-beneficial or no opinion?

A. That what was beneficial or not beneficial?

Q. Did you ever point out to them if they went to a private attorney that it would cost them a fee to do so whereas you could do this in furtherance of your employment at no cost to them?

A. No I do not think I have ever had any such discussion. No I don't think so.

Q. Did many of the injured miners ever ask you if they should go to other counsel?

A. Again I couldn't say how many but sometimes they do. [fol. 76] Q. Did you leave it with them that they were just to make up their own mind under the facts as they understood them and as you understood them?

A. Very definitely.

Mr. Hayes: That is all I have.

Re-examination by Mr. Bertrand:

Q. Senator Traynor, Mr. Burke, the attorney for the United Mine Workers District 12, has prior to this deposition handed to me a letter addressed to you under date of September 26th, 1963, signed by Joe Shannon, Acting President of the United Mine Workers of America, and has also handed to me xerox copy of that particular letter. Is this the first official document that you received relative to your employment by the United Mine Workers as their attorney to handle member's compensation claims?

A. I think it is the only document that I ever received.

Q. All right. And did you, by letter, accept this document? In other words, the conditions laid out in this letter of appointment?

A. I don't remember writing a letter in reply.

Q. You probably called them up and said I will take it?

A. I'll take it—I'll take it—I'll take it.

Q. All right. But it expresses, does it not, the understanding that you have operated upon since this letter in [fol. 77] representing the union and appearing with members before the Industrial Commission, is that correct?

Mr. Burke: I think that question assumes he is representing the union. He doesn't represent the union at all.

Mr. Bertrand: This is a matter of determination by the Court and not by you or I, Mr. Burke.

A. No,—

Mr. Bertrand: What was the question again?

Whereupon the reporter then read the question.

A. Generally speaking that is correct, yes.

Q. Now it sets forth in there the amount of your salary as you have already told us plus the fact that you are to receive reasonable expenses that you incur and the fact that you will receive help in both the West Frankfort and the Springfield office in expediting the representation, is that correct?

A. That is right.

Q. And you explained to us in greater detail what that has been, is that correct?

A. Yes.

Mr. Bertrand: Now I am going to have this marked as Deposition Exhibit Number 1.

Whereupon said document was duly marked, for purposes of identification, as Deposition Exhibit Number 1, as of this date.

[fol. 78] Q. Now I will show you what has been marked as Plaintiff's Exhibit Number 1, Senator Traynor, and ask you if that is not a Xerox copy of the letter we just referred to and discussed?

A. Yes, it is.

Mr. Bertrand: Off the record.

Whereupon there was then had an off the record discussion.

Q. Now Senator Traynor, prior to the deposition there was a discussion between Mr. Burke, yourself, one of the employees of the United Mine Workers and Mr. Hayes

and myself, concerning answers to interrogatory Number 14b. Isn't that correct?

A. Yes.

Q. And it was indicated at that time there was an error in the total calculations given in the original answers—

A. Yes.

Q. —isn't that also correct?

A. Yes.

Q. Instead of the sum \$947,111.41 the correct figure, according to a recapitulation, should be \$737.00—\$737,998.27?

A. Yes.

Q. And that difference is based upon a breakdown as follows: From October to December of 1963 there were—there was filed in your name 174 applications for adjustment of claim. There was closed in that same period 150 cases for a total amount collected of \$209,113.14:

A. Yes.

Q. You want to refer to that?

A. No.

Q. And that for the period of January through December of 1964, a full year, the amount of—the number of cases filed were 416. The number of cases concluded were 487 for a total of \$528,885.12.

A. Yes, that is correct.

Q. The amount of or number of cases filed still were 590 as you had previously indicated or as were previously indicated in these answers and the closed cases were 687 as previously indicated and the only difference then was in the total amount?

A. Yes.

Mr. Bertrand: I thank you very much.

Mr. Traynor: Yes, sir.

Mr. Bertrand: That is all.

(Deponent excused.)

[fol. 80]

INTERROGATORIES AND ANSWERS THERETO

1. State the names and addresses of all officers of United Mine Workers, District 12.

1. Joseph Shannon, Resident and International Executive Board Member, 212 South 18th Street, Herrin, Ill.

Edward H. Gibbons, Secretary-Treasurer, 2107 South State Street, Springfield, Ill.

Herman Lisse, District Executive Board Member, Board Member District 4, Kincaid, Ill.

Jess Ballard, District Executive Board Member, Board Member District 6, Elkhaville, Ill.

Chester Gossett, District Executive Board Member, Board Member District 7, 1505 East Oak Street, West Frankfort, Ill.

2. State the area of jurisdiction of United Mine Workers, District 12.

2. Illinois and Iowa.

3. State the number of members of United Mine Workers, District 12.

3. Approximately 14,000 members. (8,500 working members and 5,500 retired members.)

4. State the address of each and every office of United Mine Workers, District 12.

4. President, 800 Reisch Bldg., Springfield, Ill.

Secretary-Treasurer, 204 Reisch Bldg., Springfield, Ill.

[fol. 81] Board Members District 4, Blakely Bldg., Taylorville, Ill.

Board Member, District 6, Audrey Bldg., DuQuoin, Ill.

Board Member, District 7, 218 East Main St., West Frankfort, Ill.

5. State the names and addresses of every employee employed in each and every office of United Mine Workers, District 12.

5. President's office—

Joseph Shannon, 212 South 18th St., Herrin, Ill.

Ruth Jesberg, 1728 South 6th St., Springfield, Ill.

Secretary-Treasurer's office—

Edward H. Gibbons, 2107 South State St., Springfield, Ill.

Lois Hanahan, 615 Eastman Ave., Springfield, Ill.

Eleanor Mitts, 911 South 14th St., Springfield, Ill.

Dorothy Peddicord, 1211 Daniel St., Springfield, Ill.

Office of Board Member Gossett at West Frankfort—

Vivian Allen, 1002 East Elm St., West Frankfort, Ill.

6. State the names and addresses of every officer, member or employee responsible for legal aid of any kind for United Mine Workers, District 12.

[fol. 82] 6. All the officers and Board Members above named and the following—

Edward Lamm, International Special Representative, 1025 North Main St., Lewistown, Ill.

Floyd Morris, District Special Representative, RFD No. 4, Thompsonville, Ill.

Ruth Jesberg and Vivian Allen, Secretaries above named.

Also, Local Unions generally designate an officer or member to assist other members in preparing and filing reports of accidents occurring in mines over which they have jurisdiction. The District does not have the names of such individuals.

7. State the name and address of the present attorney described in paragraph 6 of your Answer.
7. Stuart J. Traynor, 302 East Market St., Taylorville, Ill.
8. Detail very specifically how the present attorney receives information concerning an injury to a member of United Mine Workers, District 12.
8. Members, either by themselves, or with the assistance of some other member, or officer, of the Local Union, prepare, sign and file for the attorney with either the Springfield or the West Frankfort office, a report of accident like the one signed and filed by Elery D. Morse who is mentioned in the amended [fol. 83] complaint herein, a copy of which is attached hereto and marked Exhibit "A." (See, also Exhibit "B".)
9. Does the present attorney see and interview each injured member before starting claim?
9. No.
11. If answer to nine is no—who interviews injured member—where—and what is the extent of the interview?
11. Sometimes another member or officer of the Local Union. Occasionally a District Executive Board Member. Interviews may be had at the mine, the home of the injured person or of the officer who helps him with his accident report. The extent of the interview is determined by the nature of the injuries disclosed by the accident report to the attorney.

12. Who prepares the initial claim papers?

12. If by "initial claim papers" is meant the report to the attorney of accident, they are prepared by the injured person or by someone else under his direction.

If it means the application to the Industrial Commission for adjustment of claim, that is prepared under the direction of the attorney in the office at Springfield or West Frankfort.

13. Are these papers filed directly from a union office or branch office or are they sent to the present attorney and forwarded from his office?

[fol. 84] 13. Applications for adjustment of claim are sent to the Industrial Commission by the attorney, or by his secretary under his direction, from the Springfield and West Frankfort offices.

14. Since the appointment of the present attorney

a. How many applications for adjustment of claim has he filed before the Industrial Commission?

b. How many have been concluded?

c. What was the aggregate amount sought?

d. What was the total amount collected?

14. (a) 590.

(b) 637.

(c) The maximum amount prescribed by law for the injury described in each case.

(d) \$947,111.41.

15. Has present attorney personally appeared at all Industrial Commission hearings representing injured members in their claims?

15. Yes.

17. How many claims were settled by present attorney with insurance companies without benefit of a hearing on the claim?
17. No claims are settled by the attorney without benefit of a hearing. All claims are set by the Industrial Commission for hearing and the claimant is always notified to be present at the hearing to discuss any possible settlement. This is done by the Arbitrator, the claimant and his attorney and the representative [fol. 85] of the insurance company. We have no separate record of claims so adjusted.
18. How many applications for adjustment of claim were filed by William D. Hanagan before the Industrial Commission?
 - a. How many have been concluded?
 - b. What was the aggregate amount sought?
 - c. What was the total amount collected?
18. During the period from July 1st-Sept. 30, 1963, during which time William D. Hanagan served as attorney, twenty applications for adjustment of claims were filed. Only those were filed upon which the time limit was about to expire.
 - (a) Eighty-seven.
 - (b) Maximum prescribed by law in each case.
 - (c) \$100,723.24.
19. How many claims were settled by William D. Hanagan with insurance companies without benefit of hearing on the claim?
 - a. What was the total amount of claims settled?
19. Same answer as in No. 17.
20. How many applications for adjustment of claims were filed by M. J. Hanagan before the Industrial Commission? (From January 1, 1957, until his death.)

- a. How many have been concluded?
- b. What was the aggregate amount sought?
- c. What was the amount collected?

[fol. 86] 20. 1,318 applications were filed by M. J. Hanagan from January 1, 1961, until his death.

- (a) 1,328 have been concluded.
- (b) Maximum amount prescribed by law in each case.
- (c) \$1,859,640.65.

21. How many claims were settled by M. J. Hanagan with insurance companies without benefit of hearing on the claim?

- a. What was the total amount of claims settled?

21. Same answer as in Nos. 17 and 19.

22. Did William D. Hanagan personally appear at all Industrial Commission hearings representing injured members in their claims?

22. Yes.

24. Did M. J. Hanagan (from January 1, 1957 to his death) personally appear at all Industrial Commission hearings representing injured members in their claims?

24. Yes.

26. Does present attorney handle all settlement negotiations with the insurance companies?

26. Yes.

28. Did William D. Hanagan handle all settlement negotiations with the insurance companies?

28. Yes.

30. Did M. J. Hanagan handle (from January 1, 1957 [fol. 87] to his death) all settlement negotiations with the insurance companies?

30. Yes.

33. What monetary arrangements were made with:
- M. J. Hanagan (January 1, 1957 to his death).
 - William D. Hanagan.
 - Present attorney. In answering this question set forth the exact amount either on a monthly or yearly basis.
33. The attorney is paid \$12,400 a year plus legitimate expenses.
- M. J. Hanagan

(1961)	\$12,400.00	Expense	\$2,236.54
(1962)	\$12,400.00	Expense	\$2,554.79
(1963)	January thru June		
	\$62,200.00	Expense	\$844.16
 - William D. Hanagan

(July thru Sept. 1963)			
	\$3,099.96	Expense	\$323.05
 - Stuart J. Traynor

(Jan. thru Nov. 1964)			
	\$11,366.68	Expense	\$1,497.60
38. Where does present attorney maintain his office for the benefit of the union members?
38. Present attorney maintains an office in UMWA headquarters at 800 Reisch Building, Springfield, and UMWA headquarters at 218 East Main Street, West Frankfort.
- [fol. 88] 39. Does he appear at any office of the union in connection with his employment?
39. Yes.
40. If answer to thirty-nine is yes—give days and hours of his schedule.
40. The attorney does not have a regular schedule to be in either office.
41. What are the current dues of each member?
- How much is allocated to the international?
 - How much to district union?
 - How much to local union?

41. Prior to October 1st, 1964, \$4.25 per month. Since October 1st, 1964, \$5.25 per month.

(a) * * * * *

(b) * * * * *

(c) * * * * *

43. Where does the insurance company send the settlement drafts:

a. Present attorney?

b. Union officer, member or employee?

c. Injured member?

43. Employer, who delivers same to employee and takes release.

44. When settlement is approved or award is made by Industrial Commission, does insurance company issue draft payable to injured member and present attorney?

44. No.

[fol. 89] 45. Is all of the settlement or award paid to injured member? If not, what is withheld and for what purpose?

45. Yes. None is withheld.

46. Are drafts from insurance companies deposited in a trust account by attorney and his personal checks then issued to injured member? Enclose photocopy of all personal checks issued in this respect by present attorney.

46. No.

Respectfully submitted,

Bernard H. Bertrand, 234 Collinsville Avenue, East
St. Louis, Illinois;

David J. A. Hayes, Jr., 901 South Spring Street,
Springfield, Illinois, Attorneys for Plaintiffs-Appellees.

[fol. 90] [File endorsement omitted]

[fol. 91]

No. 39642

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

[Title omitted]

Appellees' Brief—Filed February 25, 1966

NATURE OF THE CASE

This is a complaint in chancery brought by the Illinois State Bar Association and by the individual members of its Unauthorized Practice of Law Committee against United Mine Workers, District 12 in the Circuit Court of Sangamon County praying that the defendants-appellants (hereinafter referred to as the Mine Workers) be permanently enjoined and restrained from engaging in the practice of law; and specifically, that they be enjoined and restrained from employing attorneys on a salary or retainer basis to represent their members and their members' [fol. 92] dependents with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of the State of Illinois.

The Mine Workers, in their answer to this complaint, denied that they were engaging in the practice of law, but admitted that they do employ an attorney on a salary basis for the purpose of representing their members and their members' dependents with respect to Workmen's Compensation claims before the Industrial Commission of Illinois.

Since there was no dispute as to any material fact in the case, both plaintiffs-appellees (hereinafter referred to as the Unauthorized Practice of Law Committee) and the Mine Workers moved for summary relief. The Ca-

cuit Court of Sangamon County denied the motion for a summary decree filed by the Mine Workers which prayed for the dismissal of the complaint, granted the motion for summary judgment filed by the Unauthorized Practice of Law Committee and entered an order granting to the Unauthorized Practice of Law Committee all of the relief prayed for in their complaint.

The Mine Workers thereupon appealed directly to this Court from the Circuit Court of Sangamon County contending that this case involves a question arising under the Constitution of the United States. The question, according to the Mine Workers, is whether their rights to engage in concerted activities for their mutual aid and protection are protected by the First and Fourteenth Amendments to the Constitution of the United States.

The Unauthorized Practice of Law Committee contends—

[fol. 93] —That the alleged constitutional question is not in fact a question at all. We acknowledge that the Mine Workers do have the constitutionally protected right to engage in concerted activities for their mutual aid and protection and accordingly the question stated by the Mine Workers is not a question but an acknowledged fact.

—*That if there is a constitutional question in this case, the question is whether or not a union or any association has a constitutionally protected right to employ an attorney on a salary basis to represent its members and its members' dependents with respect to their legal claims arising under the laws and statutes of the State of Illinois.*

—That the State of Illinois has a legitimate interest in, and the right to exercise reasonable regulatory powers over, the practice of law, which powers have repeatedly been exercised by the State of Illinois to curb associations' salaried attorney plans.

- That this regulatory power is a legitimate exercise of the powers of the State of Illinois and its possible impact on the constitutionally protected rights of the Mine Workers to engage in concerted activities for their mutual aid and protection is far too remote to cause any doubt as to its validity.
- That the order of the Circuit Court of Sangamon County is fully supported by the facts of the record.

[fol. 94]

POINTS AND AUTHORITIES

I.

The Mine Workers have failed to present to this Court a constitutional question.

Illinois Supreme Court Rule 28-1(A);
 Brotherhood of Railroad Trainmen v. Virginia
 ex rel., 377 U.S. 1, 5-6, 12 L. Ed. 2d 89, 93
 (1964);

NAACP v. Button, 371 U.S. 415, 9 L. Ed. 2d 405
 (1963).

II.

The practice of law by the defendants-appellants by means of employing an attorney on a salary basis to represent their members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois is not a constitutionally protected right and accordingly falls well within the regulatory power of the State of Illinois.

Brotherhood of Railroad Trainmen v. Virginia
 ex rel., 377 U.S. 1, 8, 12 L. Ed. 2d 89, 94 (1964);
 NAACP v. Button, 371 U.S. 415, 420, 421, 423-426,
 435-437, 443, 445, 446, 9 L. Ed. 2d 405, 410-414,
 419, 420, 424, 425, 426 (1963);

In re Brotherhood of Railroad Trainmen, 13 Ill.
 2d 391 (1958).

[fol. 95]

III.

This Court has consistently held that organizations, including not for profit organizations, which hire lawyers to represent their members are engaging in the unauthorized practice of law.

People ex rel. Courtney v. Association of Real Estate Taxpayers of Illinois, 354 Ill. 102, 108-110 (1933);

People ex rel. Chicago Bar Association v. The Motorists Association of Illinois, 354 Ill. 595, 598, 599 (1933);

People ex rel. Chicago Bar Association v. Chicago Motor Club, 362 Ill. 50, 56, 57 (1935).

IV.

The Illinois Brotherhood case clearly states that a union may recommend lawyers to its members, but there may be no financial connection of any kind between the lawyers and the union.

In re Brotherhood of Railroad Trainmen, 13 Ill. 2d 391, 392-398 (1958).

V.

The Virginia Brotherhood case holds that a union may recommend lawyers to its members and therefore it is in accord with the decision of this Court in the Illinois Brotherhood case.

Brotherhood of Railroad Trainmen v. Virginia ex rel., 377 U.S. 1, 2, 8, 12 L. Ed. 2d 89, 90, 91, 95 (1964).

[fol. 96]

VI.

The professional services of a lawyer should not be controlled or exploited by a lay agency which intervenes between client and lawyer. A lawyer's relation to his

client should be personal and the responsibility should be direct to the client.

Canon 35 of the Canons of Professional Ethics of the Illinois State Bar Association;

Canon 35 of the Canons of Professional Ethics of the American Bar Association.

VII.

Summary Judgment procedure is an important tool in the administration of justice. Its use in a proper case, wherein there is no genuine issue as to any material fact, is to be encouraged.

Allen v. Meyer, 14 Ill. 2d 284, 291, 292 (1958).

[fol. 97]

STATEMENT OF FACTS

(Additional facts not fully set forth in the Mine Workers Statement of Facts)

There is no dispute as to any material fact in this case.

Between January, 1961 and June, 1963, M. J. Hanagan, Esq. was employed by the Mine Workers on a salary basis for the purpose of representing individual members of United Mine Workers, District 12 and those members' dependents with reference to claims before the Industrial Commission of the State of Illinois. Mr. Hanagan was paid a salary of \$12,400.00 in 1961, \$12,400.00 in 1962 and \$6,200.00 in 1963 until his death in June of 1963. He also received expenses amounting to \$2,236.54 in 1961, \$2,554.79 in 1962 and \$844.16 for the period of January through June of 1963. (Add. Abst. 44)

During this time M. J. Hanagan, Esq., filed 1318 applications for adjustment of claim and as a result of these applications, injured members and their dependents received \$1,859,640.65. (Add. Abst. 43)

Following the death of Mr. Hanagan in June of 1963, his son, William D. Hanagan, Esq. was employed by the Mine Workers and was paid a salary of \$3,099.96 and ex-

penses of \$323.05 for the period between July, 1963, and September, 1963. (Add. Abst. 44)

In September, 1963, Stuart J. Traynor, Esq. was employed by the Mine Workers at a salary of \$12,400.00 a year and is currently so employed by the Mine Workers. (Abst. 22)

[fol. 98] In describing his employment by the Mine Workers, Mr. Traynor stated that in July or August of 1963, a district board member of United Mine Workers, District 12, told him that the then Acting President of United Mine Workers, District 12, a Mr. Shannon, wanted to talk to him about a possible employment situation with the union. Subsequently Mr. Traynor was interviewed by President Shannon and the board members of the Union and in September, 1963, he was offered employment by the Mine Workers which he accepted. (Add. Abst. 30, 31)

Between October and December, 1963, 174 applications for adjustment of claim were filed in the name of Mr. Traynor and 150 claims were concluded for a total of \$209,113.14. During the full year of 1964, 416 applications for adjustment of claims were filed in the name of Mr. Traynor and 487 cases were concluded for a total of \$528,885.12. (Add. Abst. 35, 36)

Mr. Traynor explained how the United Mine Workers, District 12, plan works. Injured members are furnished by the union with a union form entitled Report to Attorney on Accidents which form advises the injured members to send said form to the Legal Department, District 12, United Mine Workers of America. When this union form is filed, Mr. Traynor presumes that this constitutes a request that he file an application for adjustment of claim with the Industrial Commission although there is no language on the form that employs Mr. Traynor as the attorney for the injured member or authorizes him to file a claim on his behalf. (Add. Abst. 8-14)

The application for adjustment of claim is prepared by secretaries in the offices of the union, the signature of the injured member is typed on the form, the secretaries are

[fol. 99] authorized to sign Mr. Traynor's name to the claim form, and when the preparation of the claim is completed, the claim form is sent by the secretaries directly to the Industrial Commission. In most instances Mr. Traynor has not seen the injured member at the time the claim form is filed with the Industrial Commission. (Add. Abst. 14-16)

Between the time of the filing of the claim and the hearing before the Industrial Commission, Mr. Traynor does not send out any specific instructions to the injured member or see him with reference to his claim. Generally speaking the only thing an injured member receives prior to the hearing is the notice to appear before the Industrial Commission. (Add. Abst. 20)

Mr. Traynor stated that it is generally known among the members of the Union that he will be at certain Union offices on certain days and that he is available for consultation prior to the day the claim is set for hearing before the Industrial Commission if the injured member desires to come in and see him. (Add. Abst. 20)

Mr. Traynor prepares his representation or presentation of the claim from his file and from examination of the petition. He makes a determination of what he thinks the claim is worth and then conducts a pre-hearing negotiation with the attorney for the respondent coal company. If the respondent coal company accepts the determination made by Mr. Traynor, Mr. Traynor recommends to the injured member that he accept the determined dollar figure for his claim. (Add. Abst. 21-23)

If Mr. Traynor and the respondent coal company are unable to work out a settlement, then a hearing on the [fol. 100] merits is held before the Industrial Commission. (Add. Abst. 23)

The value of the settlement is paid directly to the injured member and Mr. Traynor receives no fee out of the award. His compensation for handling these claims is the yearly salary that the union pays him. (Add. Abst. 24)

[fol. 101].

ARGUMENT

I.

The Mine Workers have failed to present to this Court a constitutional question.

Rule 28-1(A) of this Court provides that appeals from the final judgment of a circuit court shall be taken directly to this Court in cases involving a question arising under the Constitution of the United States or of the State of Illinois.

The question alleged to be presented by the Mine Workers "is whether the rights of the defendants to engage in concerted activities for the purpose of their mutual aid and protection are protected by the First and the Fourteenth Amendments to the Constitution of the United States." This is the basis that the Mine Workers give in their brief (page 6) as the jurisdictional ground for their direct appeal. *They do not allege as the jurisdictional ground for their direct appeal that the practice of law by the Mine Workers by means of their salaried attorney plan as aforesaid is constitutionally protected.*

We acknowledge that the Mine Workers do have constitutionally protected rights to engage in concerted activities for the purpose of their mutual aid and protection. There is no question constitutional or otherwise about this. It is a fact. It is not a "question" before the Court.

Although we contend that the Mine Workers have failed to raise a constitutional question, we feel we should reply to their argument that the restraining order of the Circuit [fol. 102] Court of Sangamon County is violative of their rights to engage in concerted activities for the purpose of their mutual aid and protection.

They cite the *Labor Management Act*, 1947, Title 29, USCA 157 and *NLRB v. Phoenix Mutual Insurance Company*, 167 F. 2d 983 as standing for the proposition that a union may employ an attorney on a salary basis to represent its members and its members' dependents with refer-

ence to their legal claims under the statutes and laws of Illinois. This obviously is absurd. Congress, in enacting the National Labor Relations Act and the Labor Management Act, never intended these acts to foster union employment of attorneys on a salary plan; nor did Congress seek by these acts to overthrow state regulation of the practice of law.

The Mine Workers next cite the *Virginia Brotherhood* case and the *Button* case in support of their position. The United States Supreme Court in the *Virginia Brotherhood* case said (pages 5-6):

"It cannot be seriously doubted that the First Amendment's guarantees of free speech, petition and assembly give railroad workers the right to gather together for the lawful purpose of helping and advising one another in asserting the *rights Congress gave them in the Safety Appliance Act and the Federal Employers Liability Act* statutory rights which would be vain and futile if the workers could not talk together freely as to the best course to follow." (emphasis ours)

First, the United States Supreme Court was talking in the *Virginia Brotherhood* case about federally protected rights under *Federal statutes* and *not* about rights under the statutes and laws of a state such as the State of Illinois; and second, this case is absolutely devoid of any issue regarding a salaried attorney plan. So too is the *Button* case where again there was no issue of a salaried attorney plan.

The Mine Workers have presented no constitutional question in this case. They indulge in an argument which is not relevant to the only possible constitutional issue in this case namely *whether or not a union has a constitutionally protected right to employ an attorney on a salary basis to represent its members with reference to their legal claims under the laws and statutes of the State of Illinois.*

The Mine Workers cite no authorities in support of their position as to this constitutional issue, and a search of case and statutory law will find none.

II.

The practice of law by the Mine Workers by means of employing an attorney on a salary basis to represent their members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois is not a constitutionally protected right and accordingly falls well within the regulatory power of the State of Illinois.

The constitutional issue in this case is not whether or not union members may engage in concerted activities for the purpose of their mutual aid and protection as constitutionally protected, but *whether or not a union has a constitutionally protected right to employ an attorney on a salary basis to represent its members and its members' dependents with respect to their legal claims under State laws.*

[fol. 104] The Mine Workers have cited no authorities which stand for the proposition that a union may employ an attorney as aforesaid. Neither the *Virginia Brotherhood* case nor the *Button* case, which are the only cases relied upon by the Mine Workers, decide this issue favorably to the Mine Workers. Both cases are clearly distinguishable from this case in the facts and law involved.

The *United States Supreme Court* in the *Virginia Brotherhood* case held (page 8) that the First and Fourteenth Amendments to the United States Constitution protect the rights of Brotherhood members through their Brotherhood to maintain and carry out *their plan for advising members who are injured to obtain legal advice and for recommending specific attorneys.* (emphasis ours) We have no quarrel with this and in fact we urge the Mine Workers to follow the decision in this case and the decision in the *Illinois Brotherhood* case by recommending to their

members and their members' dependents attorneys whom they feel are competent to handle their legal claims without placing said attorneys on a direct salary relationship with the Union. A simple reading of these cases clearly discloses that there was nothing before the Court concerning a plan whereby a union employed an attorney on a salary basis to represent its members under State laws.

The Mine Workers refer to the *Button* case in their brief. Since they do not develop this case in support of their position we assume that they do not regard it as an authority for the current practice. We certainly concur. We do feel, however, that we should comment on this case briefly.

The Virginia State Conference of the NAACP maintained in the 1950's a legal staff of fifteen (15) attorneys, [fol. 105] all of whom were negroes and members of the NAACP, for the purpose of handling litigation aimed at ending racial segregation in the public schools of the Commonwealth of Virginia.

The staff was elected at the Conference's annual convention. Each legal staff member agreed to abide by the policies of the NAACP which insofar as they pertain to professional services, limited the kinds of litigation in which the NAACP would assist. Thus the NAACP would not underwrite ordinary damage actions, criminal actions in which the defendant raised no question of possible racial discrimination, or suits in which the plaintiff sought separate but equal rather than fully desegregated public school facilities. The staff decided whether a litigant was entitled to NAACP assistance. The Conference defrayed all expenses of litigation in an assisted case, and usually, although not always, paid each attorney on the case a per diem fee, not to exceed \$60.00, plus out of pocket expenses. None of the staff received a salary or retainer from the NAACP; the per diem fee was paid only for professional services in an NAACP-assisted case. This per diem payment was smaller than the compensation ordinarily received for equivalent private professional work.

In 1956, the Virginia Legislature added a Chapter 33 to the provisions of the Virginia Code forbidding solicitation of legal business by a "runner" or "capper" to include in the definition of a "runner" or "capper" an agent for an individual or organization which retains a lawyer in connection with an action to which it is not a party and in which it has no pecuniary right or liability. Acting under this statute, the Virginia Courts enjoined [fol. 106] the NAACP from continuing with their aforesaid legal assistance plan.

In reviewing this case, the United States Supreme Court, striking down this State statute, clearly set the tenor of the litigation when it said (pages 435-437):

"We cannot close our eyes to the fact that the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically dominant white community of Virginia; litigation assisted by the NAACP has been bitterly fought. In such circumstances, a statute broadly curtaining group activity leading to litigation may easily become a weapon of oppression, however even-handed its terms appear. Its mere existence could well freeze out of existence all such activity on behalf of the civil rights of Negro citizens. It is apparent, therefore, that Chapter 33 as construed limits First Amendment freedoms."

Pin-pointing the flavor of this litigation even further, Justice Douglas in his concurring opinion said (pages 445-446):

"This Virginia Act is not applied across the board to all groups that use this method of obtaining and managing litigation, but instead reflects a legislative purpose to penalize the NAACP because it promotes desegregation of the races. * * *

"The bill, here involved, was one of five that Virginia enacted 'as parts of the general plan of massive resistance to the integration of schools of the state under the Supreme Court's decrees.'"

The *Button* case and the present litigation have no common denominator. The NAACP employed lawyers on a per diem basis, but no lawyer on their staff was paid a salary or a retainer; the Mine Workers are employing an attorney on a salary basis. The legal staff [fol. 107] of the NAACP would not handle for its members and others ordinary damage suits or in fact any litigation that was not directly related to civil rights, specifically desegregation of public schools. The Mine Workers do employ an attorney for the sole purpose of handling ordinary damage actions for their members. The main reason for the NAACP's legal assistance plan is found at page 443 of the United States Supreme Court Opinion:

"Lawsuits attacking racial discrimination, at least in Virginia, are neither very profitable nor very popular. They are not an object of general competition among Virginia lawyers; the problem is rather one of an apparent dearth of lawyers who are willing to undertake such litigation."

In no sense is there a lack of competition nor a dearth of lawyers in Illinois today who are willing to represent clients in compensation cases. There are many Illinois lawyers who would be pleased to represent the individual members and the members' dependents of United Mine Workers, District 12 with reference to compensation claims. We regard, therefore, the *Button* case as completely distinguishable from the present case.

The most important aspect of the *Button* decision as it relates to this case is to be found in the opinion of Justice White who wrote an opinion which concurred in part and dissented in part from the majority opinion. In his opinion Justice White said (page 447):

"If we had before us, which we do not, a narrowly drawn statute proscribing only the actual day to day management and dictations of the tactics, strategy and conduct of litigation by a lay entity such as the

NAACP, the issue would be considerably different, at least for me; for in my opinion neither the practice of law by such an organization nor its management of the litigation of its member or others is constitutionally protected. Both practices are well within the regulation power of the state."

This of course is exactly the issue in this case.

Although a State such as the State of Illinois may not generally prohibit individuals with a common interest from joining together to petition a court for a redress of their grievances, it is certain that any State may impose reasonable regulations limiting the permissible form of litigation and the manner of legal representation within its borders. Thus the State of Illinois may, without violating protected rights, restrict those undertaking to represent others in legal proceedings to properly qualified lawyers. Further it may determine that a union, corporation or association whether organized for profit or not for profit does not itself have a legal standing to litigate the interest of its members or stockholders and that only individuals with a direct legal interest of their own may press their claims in its courts. It may also determine that a union, corporation or association whether organized for profit or not for profit may not employ an attorney on a salary to represent its members and their members' dependents with respect to their legal claims. These types of state regulations are undeniably matters of legitimate concern to the State of Illinois and their possible impact on the rights of expression and association are far too remote to cause any doubt as to their validity.

The question of the salaried attorney plan of United Mine Workers, District 12 is in essence whether the particular regulation of conduct concerning litigation has a reasonable relation to the furtherance of a proper State interest and whether that interest outweighs any foreseeable harm to the furtherance of protected freedoms.

[fol. 109] This Court has already determined that the State of Illinois does in fact have a proper interest which outweighs any foreseeable harm to protected rights in the regulation of the practice of law and has firmly and repeatedly held that lay groups which employ attorneys to represent their members and their members' dependents are engaged in the unauthorized practice of law. (*People ex rel. Courtney v. Association of Real Estate Taxpayers of Illinois*, 354 Ill. 102; *People ex rel. Chicago Bar Association v. Motorists Association of Illinois*, 354 Ill. 595; *People ex rel. Chicago Bar Association v. Chicago Motor Club*, 362 Ill. 50; *In re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391.)

III.

This Court has consistently held that organizations, including not for profit organizations, which hire lawyers to represent their members are engaging in the unauthorized practice of law.

The Association of Real Estate Taxpayers of Illinois, an Illinois not for profit corporation, engaged in furnishing its members with advice and assistance in connection with real estate tax problems. They employed attorneys who did the court work. These attorneys were paid by the corporation.

This Court in that case (*People ex rel. Courtney v. Association of Real Estate Taxpayers of Illinois*, 354 Ill. 102) stated (pages 108-110):

"The question presented to this court is whether or not the respondent is in contempt of this court by having engaged in the practice of law. It is well settled law that this court has jurisdiction and may in an original proceeding punish both natural persons or corporations engaging in the unauthorized practice [fol. 110] of law, for contempt. (*People v. Peoples Stock Yards State Bank*, 344 Ill. 462.) That relation of trust and confidence essential to the relation of attorney

and client did not exist between the members of the respondent association and its attorneys, and whatever relation of trust and confidence existed was between the membership and the association. * * * Much that was said in *People v. Peoples Stock Yards State Bank*, supra, is controlling in this case as to the question of the respondent's having practiced law. In that decision this court said, among other things: 'Practicing as an attorney or counselor at law according to the laws and customs of our courts is the giving of advice or rendition of any sort of services by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill. * * * According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients and all action taken for them in matters connected with the law. * * * Respondent in the present case has, beyond question, deliberately engaged in the unauthorized practice of law. * * * That it used for that purpose the service of licensed attorneys in its employ does not alter the fact that it was thus practicing law. * * *'

"While the legislature of our State has fixed a penalty for the unlawful practice of law, yet the legislature cannot exempt any person, legal or natural, from prosecution for contempt for engaging in the practice of law. To practice law a person must comply with the requirements laid down by this court. (*In re Day*, 181 Ill. 73.) It is well settled that no corporation can be licensed to practice law. The fact that the respondent was a corporation organized not for profit does not vary the rule."

The Mine Workers attempt to distinguish this case from their present practices by saying that an association like the Taxpayers Association sought law business, while they, on the other hand, seek no law business and wish that they had none. This does not alter the fact that they are, however, engaging in the unauthorized practice of law, as were the *Taxpayers*, by means of their salaried attorney plan.

The decision in the *Taxpayers* case was immediately followed by the decision of this Court in the *Motorists* case. The Motorists Association, an Illinois not for profit corporation, was organized and, through a licensed attorney, furnished legal assistance to motorists. They covered claims for damages, inquests, arrests and charges.

This Court in that case (*People ex rel. Chicago Bar Association v. The Motorists Association of Illinois*, 354 Ill. 595) stated (pages 598-599):

"It requires no discussion to demonstrate that the services so rendered by respondent for its members, through the attorneys employed by respondent, are legal services. (*People v. Peoples Stock Yards Bank*, 344 Ill. 462.) Although respondent denies that its conduct constituted the practice of law, its principal contention is that it is entitled to practice law by virtue of the fact that it is a corporation organized 'not for profit' and that it is therefore not prohibited from practicing law. In support of this contention it relies upon 'An act to prohibit corporations from practicing law, directly or indirectly, making the same a misdemeanor and providing penalties for the violation thereof [fol. 112] of.' (*Cahill's Stat.* 1933, chap. 32, pars. 224-228.) Section 1 of the act prohibits corporations from practicing law. Section 5 provides that the act shall not apply to 'corporations organized not for pecuniary profit.' The same section, however, also provides as follows: 'But no corporation shall be permitted to render any services which cannot lawfully be rendered by a person not admitted to practice law in this State

nor to solicit directly or indirectly professional employment for a lawyer.'

"In *People v. Peoples Stock Yards Bank*, supra, we recognized that it was within the power of the legislature to pass an act prohibiting corporations from practicing law and to provide a penalty for violations of the act, but we also indicated clearly that the legislature had no authority to license or permit a person to practice law in this State, and that such an act would be invalid if it sought in any way to tie the hands of this court in determining who should be permitted to practice law and in punishing those who engage in such practice without the permission of this court. (*In re Day*, 181 Ill. 73.) In *People v. Association of Real Estate Taxpayers*, 354 Ill. 102, following the well settled rule, we held that a corporation cannot be licensed to practice law, and that this rule applies to corporations organized not for profit.

"There can be no question from this record but that respondent wrongfully engaged in the practice of law for several years."

This case just as clearly as the *Taxpayers* case condemns the salaried attorney practice.

The condemnation of this Court with reference to the salaried attorney plan found its sharpest focus in *Chicago Motor Club* case. The Chicago Motor Club, an Illinois corporation organized not for profit, engaged in furnishing [fol. 113] legal services to its members through licensed attorneys.

This Court in *People ex rel. Chicago Bar Association v. Chicago Motor Club*, 362 Ill. 50 stated (pages 56-57):

"By way of exception to the findings of the commissioner, respondent claims there is no admission in the record that it solicited memberships for the purpose of performing legal services; that the corporation itself performed no legal services, but such as were in fact

performed were by lawyers engaged by respondent for its members pursuant to authority received by it from them; that such legal services were paid for out of dues collected by respondent from its members as their representative and agent. It is further contended that respondent is not engaged in the practice of law within its ordinarily accepted sense, but that its legal functions are only a part of its many-sided activities as a service organization whose members have a common interest.

"However beneficial its many other purposes and services seem to be to its members and to the public generally, we cannot condone the advertisements and solicitations of memberships by respondent and its admission that it was only acting as agent in rendering legal services for its members without abandoning the rules laid down in several recent cases governing such practices. While the case of *People v. Peoples Stock Yards Bank*, 344 Ill. 462, is distinguishable from the present case in many respects, yet the fundamental principle was there expressed that 'a corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it.' (emphasis ours) When the Chicago Motor Club offered legal services to its members with the statement, 'should you be arrested for an alleged violation of the Motor Vehicle law, you may call the legal department, and one of our attorneys will conduct your defense in court,' it was engaging in the [fol. 114] business of hiring lawyers to practice law for its members. This we have repeatedly condemned in Illinois. (*People v. Peoples Stock Yards Bank*, supra; *People v. Motorists Ass'n.*, 354 Ill. 595; *People v. Real Estate Tax-Payers*, 354 id. 102.) Other jurisdictions have reached the same or similar conclusions in recent cases. (*Goodman v. Motorists Alliance*, 29 Ohio N.P.R. 31; *In re Morse*, 98 Vt. 85, 126 Atl. 550; *In re Opinion of the Justices*, 194 N.E. (Mass.) 313; *Rhode Island Bar Ass'n. v. Automobile Service Ass'n.*, 179 Atl. (R.I.)

139, (decided May 9, 1935.) The fact that respondent was a corporation organized not for profit does not vary the rule. *People v. Real Estate Tax-payers*, supra.

"Legal services cannot be capitalized for the profit of laymen, corporate or otherwise, directly or indirectly, in this State. In practically every jurisdiction where the issue has been raised it has been held that the public welfare demands that legal services should not be commercialized, and that no corporation, association or partnership of laymen can contract with its members to supply them with legal services, as if that service were a commodity which could be advertised, bought, sold and delivered. (emphasis ours) The present case offers no exception to the rule, notwithstanding the other beneficial services rendered by respondent to its members and to the public generally."

Clearly the *Taxpayers* case, the *Motorists* case, and the *Chicago Motor Club* case state that a corporation or association may not practice law nor may they hire or retain attorneys to represent their employees or members. The law in Illinois is absolutely and definitely clear on this subject. There is no difference between United Mine Workers, District 12, employing an attorney on a salary basis to represent members of the union with reference to claims arising under the Workmen's Compensation Act of Illinois [fol. 115] and the *Taxpayers*, *Motorists* or *Chicago Motor Club* employing attorneys to represent their members in their respective spheres of legal activity. It simply is the unauthorized practice of law by the Union.

The Mine Workers in fact appear in their brief (page 11) to be offering the same arguments that the Chicago Motor Club offered to this Court. They argue that "the legal fiction is misapplied and wholly unapplicable in the case at bar for the reason that the defendants seek and desire no law business. All they do is take care of their own law business, and the less they have the better."

We wonder if there is any difference between this argument and the rejected argument of the Chicago Motor Club to wit (page 56) :

"By way of exception to the findings of the commissioner, respondent claims there is no admission in the record that it solicited memberships for the purpose of performing legal services; that the corporation itself performed no legal services, but such as were in fact performed were by lawyers engaged by respondent for its members pursuant to authority received by it from them; that such legal services were paid for out of dues collected by respondent from its members as their representative and agent. It is further contended that respondent is not engaged in the practice of law within its ordinarily accepted sense, but that its legal functions are only a part of its many-sided activities as a service organization whose members have a common interest."

Is this not in fact the identical argument of United Mine Workers, District 12? We think it is.

[fol. 116]

IV.

The Illinois Brotherhood case clearly states that a union may recommend lawyers to its members, but there may be no financial connection of any kind between the lawyers and the union.

In re Brotherhood of Railroad Trainmen, 13 Ill. 2d 391, the Brotherhood of Railroad Trainmen, a labor organization, had established a "Legal Aid Department" in 1930 because it felt that the claims of its members resulting from injuries suffered in their work were being settled for unfair amounts under pressure from railroad claim agents and by the threat of loss of employment, and because the members were being solicited by lawyers of varying degrees of competence who handled claims of members on contingent fees that sometimes ran as high as 50% of the amount recovered.

The Brotherhood legal aid department was located in Cleveland, Ohio. Operating in conjunction with the legal aid department were regional counsel and regional investigators. By agreement with the Brotherhood, the attorneys designated as regional counsel charged a fee of 25% of the amount recovered in each case, whether recovery was by settlement or by judgment, which 25% included all expenses of investigation and litigation.

Each local lodge of the Brotherhood appointed a member to report member's injuries, to contact the injured man or the relatives of a member who was killed, to make known that legal advice by the regional counsel was available free of charge, and to make known the availability of regional counsel to handle the claim for the contingent 25% fee. The lodge member so appointed would recommend and urge the employment of regional counsel. He [fol. 117] carried blank copies of contracts employing the regional counsel's firm as attorneys. If a signed contract were not obtained in the field, the injured man and often his wife would be brought to the office of the regional counsel in Chicago, all at the latter's expense.

The Brotherhood argued (1) that its method of handling the personal injury and death claims of its members was permissible because under the Railway Labor Act, the Brotherhood is authorized to represent its members before the National Railroad Adjustment Board or other appropriate tribunals in the processing of disputes growing out of grievances; (2) that the interest of the members of the Brotherhood in legal developments in Federal Employers' Liability Act cases is comparable to the interest of the insurance companies who are permitted to take over the defense of claims against their policy holders; and (3) that as a matter of policy, injured trainmen, and the representatives of deceased trainmen, are entitled to procedures that will insure that they receive competent legal advice for reasonable fees in matters involving personal injury incurred during the course of employment.

In answer to the first argument, this Court pointed out (page 395) that injury and death claims are not the kind of labor disputes contemplated by the Railway Labor Act and that there is nothing to suggest that Congress intended by that Act any more than by the Labor Management Relations Act to overthrow State regulation of the practice of law. With reference to the attempted analogy to insurance company procedures, this Court stated (page 395) that the interest of the insurance company is of a different kind—the money involved is its money—and that the interest of [fol. 118] the Brotherhood in the individual claims of its members does not authorize it to engage in the active solicitation of those claims for particular lawyers who finance the solicitation. In response to the policy argument, this Court (page 396) found it to be insufficient to override the principles that must govern the members of the legal profession in their relations with clients.

While recognizing that its holdings with respect to the arguments of the Brotherhood would ordinarily be sufficient, this Court deemed it appropriate, under the circumstances, to indicate in broad outline what the Brotherhood may do with respect to the injury and death claims of its members. Stating that the Brotherhood has a legitimate interest in investigating the circumstances under which one of its members has been injured, which interest antedates the occurrence of any particular injury, this Court stated (pages 397-398) that the Brotherhood:

(1) May maintain a staff to investigate injuries to its members, may so conduct those investigations that their results are of maximum value to its members in prosecuting their individual claims, may make the reports of investigations available to the injured man or his survivors, and may finance such investigations by the 218,000 members of the Brotherhood.

(2) May make known to its members generally, and to injured members and their survivors in particular:

(a) The advisability of obtaining legal advice before making a settlement, and

(b) The names of attorneys who, in its opinion, have the capacity to handle such claims successfully.

(3) May not cause or permit its employees to carry [fol. 11] contracts for the employment of any lawyer, or photostats of settlement checks.

(4) *May not have any financial connection of any kind with any lawyer handling injury and death claims of members or their survivors.* (emphasis ours)

(5) May not fix the fees to be charged for legal services to its members.

There is no question that the Mine Workers are squarely in violation of the outlines which this Court gave in this opinion. There is a direct financial connection between the United Mine Workers, District 12, and Attorney Stuart J. Traynor. Mr. Traynor is paid \$12,400.00 a year by United Mine Workers, District 12, for handling the injury and death claims of the members of the Union and their dependents before the Illinois Industrial Commission. The violation is totally obvious.

V.

The Virginia Brotherhood case holds that a union may recommend lawyers to its members and therefore it is in accord with the decision of this Court in the Illinois Brotherhood case.

The Virginia State Bar brought this suit against the Brotherhood of Railroad Trainmen to enjoin them from carrying on activities which, the Bar charged, constituted the solicitation of legal business and the unauthorized practice of law in Virginia. It was conceded that in order to assist the prosecution of claims arising under federal statutes by injured railroad workers or by families of workers killed on the job, the Brotherhood maintained in Virginia

and throughout the country a Department of Legal Counsel which recommended to Brotherhood members and their families the name of lawyers whom the Brotherhood believed to be honest and competent. Finding that the Brotherhood plan resulted in the channeling of all or substantially all of the worker's claims to lawyers chosen by the Department of Legal Counsel, the Chancery Court of the City of Richmond, Virginia, issue an injunction against the Brotherhood carrying out its plan in Virginia. The Supreme Court of Appeals of Virginia affirmed the injunction and the United States Supreme Court granted certiorari.

The United States Supreme Court, after reviewing the history of the Brotherhood plan and the operations of the Brotherhood's Department of Legal Counsel, held (page 8)

"We hold that the First and Fourteenth Amendments protect the right of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice *and for recommending specific lawyers.*" (Emphasis ours)

The Virginia Brotherhood case, in no way purports to change, modify or extend the decision of this Court in the Illinois Brotherhood case. Both cases hold that a union may recommend lawyers to its members, not that it may practice law by hiring attorneys on a salary basis.

VI.

The professional services of a lawyer should not be controlled or exploited by a lay agency which intervenes between client and lawyer. A lawyer's relation to his client should be personal and his responsibility should be directly to the client.

The Mine Workers in their brief make a very interesting surmise when they state (page 10)

[fol. 121] "When a member of District 12, United Mine Workers of America, desire the services of the

Workmen's Compensation attorney, and the attorney assumes the responsibility, the personal relation immediately exists and the attorneys professional and ethical obligations to his client automatically attach themselves to that relationship."

A very routine perusal of the record belies this statement.

Stuart J. Traynor, Esq., the so-called Workmen's Compensation attorney for the defendants-appellants, explained in his deposition how the United Mine Workers District plan works.

The United Mine Workers, District 12 makes available to their members who are injured a form entitled Report to Attorney on Accidents, Legal Department—United Mine Workers of America, District 12, which is filled out by the injured member and then sent by the injured member to one of the offices of the United Mine Workers, District 12. (Add. Abst. 8-14) Mr. Traynor testified that he then "presumed" that when the injured member filed this form with the legal department of the union he desired Mr. Traynor to file his case with the Industrial Commission. (Add. Abst. 8-14) Mr. Traynor conceded that as a matter of fact there is no language on this form which in any way instructs him to file a claim with the Industrial Commission or employs him as the attorney for the injured member. (Add. Abst. 14) The record is quite clear that when the injured worker files the union accident report form with the legal department of the union, Mr. Traynor thereupon presumes that he is then to act as the attorney for the injured member, there being of course no personal contact between the "presumed" attorney and the injured member at this juncture. The [fol. 122] injured member without personally selecting his own attorney or Mr. Traynor is now represented by Mr. Traynor whether he likes it or not.

Mr. Traynor next testified that the secretaries of United Mine Workers, District 12 fill out the application for ad-

justment of claim, type in the name of the injured member, are authorized to sign his name to the claim form and send the claim form directly to the Industrial Commission. (Add. Abst. 14-16) Mr. Traynor conceded that at the time the claim form is filed with the Industrial Commission in most instances he has never even seen the injured member. (Add. Abst. 14-16) Is this what the defendants mean when they say that the personal relationship of attorney-client immediately exists?

Mr. Traynor continuing, testified that he does not send out any specific instructions to the injured members to see him before the day their claim is to be presented to the Industrial Commission and that, generally speaking, the only thing an injured member receives is a notice to appear before the Industrial Commission on a certain day. (Add. Abst. 20) He further testified that he prepares his representation or presentation of the injured member's claim from his file on the claim. (Add. Abst. 21-23)

It is perfectly obvious that there is simply no attorney-client relationship in at least most instances until attorney and client meet for the first time on the day that the claim is to be heard by the Industrial Commission.

We of the organized Bar are sincerely interested in seeing to it that the United Mine Workers have competent legal representation, but we feel that only through [fol. 123] an independent attorney operating in the traditional attorney-client relationship can this be accomplished. How can the injured member of United Mine Workers, District 12, find proper legal satisfaction for his claim when his claim is merely part of a mass production of claims by an attorney he has in most instances never even met before the day the hearing on his claim is held?

VII.

Summary Judgment procedure is an important tool in the administration of justice. Its use in a proper case, wherein there is no genuine issue as to any material fact, is to be encouraged.

In *Allen v. Meyer*, 14 Ill. 2d 284, this Court said (pages 291-292):

"For many years we have held that the entry of summary judgment or decree is proper only where the issues involved are simple in nature and the legal consequences of those facts conclusive. (*Ward v. Sampson*, 391 Ill. 585). These decisions, however, were handed down under the provisions of a practice statute which then severally limited the classes of cases in which summary disposition could be made. The statute has since been amended to provide for the entry of summary judgment or decree in any proper case (*Ill. Rev. Stat. 1957*, chap. 110, par. 57). We regard this as a salutary development. Summary judgment procedure is an important tool in the administration of justice. Its use in a proper case, wherein is presented no genuine issue as to any material fact, is to be encouraged. * * *

"In the instant case both parties moved for summary judgment and thereby the court was invited to decide the issues by reference to its file. It is clear that all material facts were before the court; the issues were defined; and the parties were agreed that only a question of law was involved. * * *

[fol. 124] "The Court properly treated each party's motion as being not only an application for a summary decree, but a reply to the motion of his adversary. This was the proper interpretation under the circumstances. On the facts of this case, the affidavits of each party were presented, not only in support of its own motion, but as a counter-affidavit opposing the motion of its adversary. Each party thereby admitted the sufficiency of his opponent's motion and supporting affidavit. *Grant v. Reilly*, 346 Ill. App. 399."

The defendants now contend on page 11 of their brief,

"There is not a word in the record to sustain the inhibition by the Circuit Court against (1) giving

legal counsel and advice; (2) rendering legal opinions; (3) representing themselves in any claims other than under the Workmen's Compensation Act; (4) employing attorneys to represent them in any other kinds of claims; and (5) practicing law in any form directly or indirectly."

A simple reading of our motion for summary judgment and supporting affidavit, of which the defendants-appellants admitted the sufficiency based on the record when they filed their corresponding motion for summary decree, discloses that the aforesaid was, in fact, a part of the relief for which we asked. (Abst. 27-29) We wonder why the defendants-appellants now come in to this Court and seek to attack the relief which they admitted was present for the Circuit Court to grant.

The order of the Circuit Court finds that the defendants as a matter of law are engaging in the unauthorized practice of law when they engage in the United Mine Workers, District 12, plan. Obviously they are doing all of the things which the order permanently enjoins them from doing when they are so engaged.

[fol.125]

CONCLUSION

This is not a pettifogging suit originated by a group of malcontented attorneys, but is a considered action by the members of a duly constituted Committee of the Illinois State Bar Association. Members of this Committee, as plaintiffs, are exercising their duty in the public interest for the protection of the public and the legal profession.

The members of the Unauthorized Practice of Law Committee are sincerely interested in making available to the individual members of United Mine Workers, District 12 and their dependents the best possible legal services available. An examination of the record in this case, however, conclusively shows to this Court that the union members and their dependents are not receiving such legal services. The number of applications for adjustment of

claim filed by the present attorney and his predecessors and the amount of money awarded by the Illinois Industrial Commission to union members and their dependents demonstrates that we are dealing with a serious question of public welfare. No injured union member is getting the best possible legal services when the union employed attorney relies in preparing his representation upon documents obtained without personal contact with his client and when the union employed attorney in fact meets his client for the first time at the hearing before the Illinois Industrial Commission with reference to his client's claim.

It is also evident from the number of claims filed and the number of claims disposed of in any given year, that the union employed attorney is involved in mass production business as evidenced by the year 1964 when 487 claims [fol. 126] were conducted for a total of \$528,885.12. Volume business is no substitute for personal attention. The only beneficiaries of this type of practice are the coal companies and their insurance carriers and most certainly not the injured union members.

If for example the 487 claims concluded in 1964 had been handled on an individual basis by attorneys retained by the individual injured union members we wonder what the total recovery figure might have been.

The solution to the above is very simple. It has been available to United Mine Workers, District 12 for many years and has been suggested many times to the Mine Workers by the members of the Unauthorized Practice of Law Committee. *The solution is of course that the Mine Workers make available to their members and their members' dependents a list of attorneys whom they feel can properly handle their members' legal claims. From this list, each individual may then select his attorney.* Since there are obviously many Illinois attorneys who are well qualified to handle compensation claims, the injured member or his dependent will be well represented. There is no need nor no right for the Mine Workers, by the vehicle of a salaried attorney, to control the law business of their mem-

bers and their members' dependents and to interpose themselves between attorney and client.

When an attorney is employed by a union, or for that matter any association or corporation, to represent individual litigants, two problems immediately arise. The lawyer becomes subject to the control of a body which is not itself a litigant and which, quite unlike the lawyers it employs, is not subject to strict professional discipline [fol. 127] as an officer of the court. In addition the lawyer necessarily finds himself with a divided allegiance—to his employer and to his client—which may very well prevent full compliance with his basic professional obligations.

There is certainly no logical nor legal reason to suppose that if an attorney can be hired on a salary basis to represent members of an organization like United Mine Workers, District 12, with reference to compensation cases before the Industrial Commission of the State of Illinois why in due course that attorney could not easily and quickly enlarge his representation of members of an organization and the members' dependents to include personal injury, probate and divorce matters to mention only a very few.

This case is an attempt to open the door onto a situation where a lay group, such as the Mine Workers, would hire an attorney on a salary basis to represent their members and their members' dependents in all phases of their legal problems. We cannot believe that this Court will allow this to happen.

This case puts the legal profession at a vital crossroads. It poses in effect the question of whether the lawyer is to remain an independent practitioner or whether he is to become a dependent employee of the lay group. The moment we allow lay groups to control lawyers, the legal profession loses its independence. It is essential to our society that the legal profession continue to maintain its independence so that lawyers can never be subverted to the will of one part of our society at the expense of other parts. [fol. 128] We respectfully request that in the public in-

terest the order of the Circuit Court of Sangamon County be affirmed.

Respectfully submitted,

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St. Louis, Illinois, Telephone BR 1-5100;

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Attorneys for Plaintiffs-Appellees.

[fol. 129] Clerk's Certificate to foregoing papers (omitted in printing).

[fol. 130]

IN THE SUPREME COURT OF ILLINOIS

Docket No. 39642—Agenda 28—March, 1966.

ILLINOIS STATE BAR ASSOCIATION et al., Appellees,

v.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Appellant.

OPINION—Filed May 23, 1966

PER CURIAM: The Illinois State Bar Association and others, individually and as members of the Committee on Unauthorized Practice of Law, filed a complaint in the circuit court of Sangamon County seeking to restrain defendant, United Mine Workers of America, District 12, from engaging in activities alleged to constitute the unauthorized practice of law. The trial court entered a summary decree granting the relief requested. From that determination the Mine Workers appeal, contending that the decree violates the first and fourteenth amendments to the United States constitution.

The facts are substantially undisputed. For many years, the Mine Workers, a voluntary association, has employed a licensed attorney on a salary basis to represent members and their dependents in connection with claims for personal injury and death under the Workmen's Compensation Act. It is understood and provided that members may employ other counsel if they so desire. Selection of the attorney was made by the Executive Board of District 12, and the terms of his employment agreed upon by the acting president and the attorney pursuant to board authorization. The letter from the former to the latter outlining the terms of employment contains the following sentence: "You will receive no further instructions or directions and have no interference from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent."

The plan, as described by the current salaried attorney, operates as follows: Injured members are furnished forms by the union entitled "Report to Attorney on Accidents" which advise such injured members to fill out and send the forms to the Legal Department, District 12, United Mine Workers of America. When one of such forms is received by the legal department the salaried attorney presumes that it constitutes a request that he file with the Industrial Commission an application for adjustment of claim on behalf of the injured union member although there is no language appearing on the form which specifically requests that the salaried attorney file such claim. The application for adjustment of claim is prepared by secretaries in the union [fol. 131] offices and when completed is sent by the secretaries directly to the Industrial Commission. In most instances the salaried attorney has not seen or conferred with the injured member at the time the claim is filed with the commission, although it is understood by the union membership that the attorney is available for conferences on certain days at particular locations. Between the time the claim is filed and the hearing before the commission, the salaried attorney prepares his case from his file and from examination of the application, usually without having a

conference with the union member with regard to the latter's claim. Ordinarily, the only thing an injured member receives concerning his claim is a notice to appear before the Industrial Commission, and usually this is the first time the attorney and the injured member come into contact with each other.

The attorney determines what he believes the claim is worth, presents his views to the attorney for the respondent coal company during prehearing negotiation, and attempts to reach a settlement. If the coal company agrees with the Mine Workers' attorney, the latter recommends to the injured member that he accept such resolution of his claim. If a settlement is not reached, a hearing on the merits of the claim is held before the Industrial Commission.

The full amount of the settlement or award is paid directly to the injured member. No deductions are taken therefrom, and the attorney receives no part thereof, his entire compensation being his annual salary paid by the union.

The question for decision is whether the above related activities amount to the unauthorized practice of law by the Mine Workers under prior determinations of this court, and, if so, whether such activity is nevertheless protected by the first and fourteenth amendments to the United States constitution.

It may be noted here that the services rendered the union members in the handling of their compensation claims were legal services and that one who performs them is engaged in the practice of law. *People ex rel. Chicago Bar Association v. Goodman*, 366 Ill. 346.

It is argued by the Illinois State Federation of Labor and Congress of Industrial Organizations, AFL-CIO, as *amicus curiae*, that since the United Mine Workers, District 12, is a voluntary, unincorporated association and not a legal entity separate and apart from its constituency, there is no problem concerning the existence of a lay intermediary between the individual member and the attorney. Under [fol. 132] this view, the attorney is merely employed collec-

tively by the members of the association to present claims before the Industrial Commission. While it is correct that it has been held that a voluntary association such as the Mine Workers is not a legal entity amenable to process and suit at law (*Gahill v. Plumbers, Gas and Steam Fitters' and Helpers' Local 93*, 238 Ill. App. 123, 127; *Chicago Grain Trimmers Association v. Murphy*, 389 Ill. 102, 109; 4 Am. Jur., Associations & Clubs, par. 41), this is not to say that such voluntary, unincorporated associations may not sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship. (As to whether unincorporated labor unions should be treated as "entities", see *The Legal Status and Suability of Labor Organizations*, 28 Temple Law Quarterly 1.) In any event we are concerned here not with legal forms, but activities of the association. It is the latter which must determine whether the association is engaging in the unauthorized practice of law. See *Rhode Island Bar Association v. Automobile Service Association*, 55 R.I. 122, 179 Atl. 139.

It is clear that under the prior decisions of this court, organizations, including not-for-profit organizations, which hire or retain lawyers to represent their individual members in legal matters are ordinarily engaging in the unauthorized practice of law. (*People ex rel. Courtney v. Association of Real Estate Tax-payers of Illinois*, 354 Ill. 102; *People ex rel. Chicago Bar Association v. The Motorists Association of Illinois*, 354 Ill. 595; *People ex rel. Chicago Bar Association v. Chicago Motor Club*, 362 Ill. 50.) The underlying reasons for such conclusion are that the "relation of trust and confidence essential to the relation of attorney and client did not exist between the members of the respondent association and its attorneys, and whatever relation of trust and confidence existed was between the membership and the association." (*People ex rel. Courtney v. Association of Real Estate Tax-payers*, p. 109). And, as was said in *Chicago Motor Club*, p. 57: "Legal services cannot be capitalized for the profit of laymen, corporate or otherwise, directly or indirectly, in this State. In prac-

tically every jurisdiction where the issue has been raised it has been held that the public welfare demands that legal services should not be commercialized, and that no corporation, association or partnership of laymen can contract with its members to supply them with legal services, as if [fol. 133] that service were a commodity which could be advertised, bought, sold and delivered."

See also, *People ex rel. Chicago Bar Association v. Goodman*, 366 Ill. 346, a case involving a lay respondent's employment of lawyers to represent injured persons whose workmen's compensation claims respondent was attempting to settle, where the court said at page 356: "The faithful observance of the fiduciary and confidential relationship between attorney and client is one of the greatest traditions of the legal profession. In Goodman's business that relationship is absent as to the litigant whom the attorney employed by Goodman purportedly represents. The respondent is the attorney's real client and paymaster, and the one to whom the attorney owes allegiance."

Thought to be of paramount importance to the public is the preservation of the integrity of the lawyer-client relationship involving the highest degree of trust and confidence, and an unswerving dedication of the lawyer's abilities to the interests of his client. Intervention in this relationship of third-party organizations by whom lawyers are directly employed and compensated to handle personal claims of organization members has generally been prohibited. See cases in 7 Am. Jur. 2d, p. 100; 157 A.L.R. 292.

In *In Re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, this court applied the foregoing considerations to an organization similar in structure to the United Mine Workers Association. There, the brotherhood, through its Legal Aid Department, had established a nationwide scheme whereby "regional counsel" were selected by the Brotherhood. These attorneys paid the departmental operating costs and were, in turn, recommended to individual brotherhood members as competent to represent them on personal injury and death claims. In that case this court held imper-

missible any "financial connection of any kind between the Brotherhood and any lawyer" in connection with personal injury claims of brotherhood members. However, the court specifically set forth an alternate plan which would be permissible. Reference thereto is appropriate here. It was there stated: "The Brotherhood has a legitimate interest in investigating the circumstances under which one of its members has been injured. That interest antedates the occurrence of any particular injury. We are of the opinion that the Brotherhood may properly maintain a staff to investigate injuries to its members. It may so conduct those investigations that their results are of maximum value to its [fol. 134] members in prosecuting their individual claims, and it may make the reports of those investigations available to the injured man or his survivors. Such investigations can be financed directly and without undue burden by the 218,000 members of the Brotherhood. The Brotherhood may also make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal advice before making a settlement and second, the names of attorneys who, in its opinion, have the capacity to handle such claims successfully." (13 Ill. 2d at pages 397-98.) We also specifically refuted the argument, presented again here, that the collective interest of the members of the union in recovering adequate compensation for bodily injury and death is largely synonymous with the individual members' interests concerning their particular claims, holding that, "While these considerations have weight, they are insufficient in our opinion to override the principles that must govern the members of the legal profession in their relations with clients."

Also relevant to our inquiry here are the Canons of Ethics of the Illinois State Bar Association and the Chicago Bar Association. While such canons do not have the force and effect of judicial decision or statutory law, they nevertheless are of interest to this court, provide guidelines to members of the profession and are helpful in reaching determinations in particular cases. Canons 35 and 47 provide:

"(35) Intermediaries. The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs. * * *

"(47) Aiding the Unauthorized Practice of Law. [fol. 135] No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."

These canons are similar to those of the American Bar Association which have been interpreted by that group as precluding the employment arrangement now before us. (Informative Opinion A of 1950 of the American Bar Association Standing Committee on Unauthorized Practice of Law.)

In our consideration of this case, the policy arguments of the Mine Workers and *amici* are impressive. There can be no question of the hazards involved in coal mining, and undoubtedly the possibility exists that injured coal miners untutored in the intricacies of workmen's compensation law might accept wholly inadequate settlements. Benefit to the miner, in that compensation of counsel under the plan here in effect is from the union treasury rather than the injured

member or his family, is not to be easily disregarded, nor is it to be denied that the organization has an active interest in securing fair treatment for its members. Arrangements whereby common interest groups provide legal services for their membership have respected advocates and are recognized as proper in varying forms by some States. (See Markus, Group Representation by Attorneys as Misconduct, 14 Cleveland-Marshall Law Review, 1, (1965).) But, persuasive as these and other considerations are, we believe as in *In Re Brotherhood of Railroad Trainmen* that they are insufficient to override the governing principles in the attorney-client relationship.

That relationship is pre-eminently personal in nature and the fundamental duty of an attorney involves undiluted loyalty to the client whom he serves and whose interests he protects, considerations we believe largely absent where the attorney has been selected and hired on a salary basis by a lay intermediary to represent individual clients. It is basically a master-servant relationship, but as the New York Court of Appeals has put it (*In Re Cooperative Law Co.*, 198 N.Y. 479, 483-4, 92 N.E. 15-16), it is such "in a limited and dignified sense, and it involves the highest trust and confidence." In the case before us, the lawyer is not directly employed by the miner for whose peculiarly personal and individual injury he seeks compensation; he is chosen and employed by the officers of the union. The lawyer is not paid for his services by the client; his salary is paid by the association. Even though the terms of the letter of employment [fol. 136] indicate no organizational direction will be given, the interests of the employer and the client in a given case may or may not be identical, since as the AFL-CIO *amicus* brief indicates, the interests of the union, collectively, may extend beyond the interest of the injured member. Conceivably, the interest of the former might be best served by utilizing a particular case as a testing vehicle for appellate review of untried legal theories in the hope of securing a determination beneficial to union members collectively in future litigation, whereas the injured mem-

ber may prefer a proffered settlement deemed wholly adequate by him. It is manifest, we believe, that these factors all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties. We, of course, do not deal here with the totally different case of a salaried lawyer for indigent clients.

We therefore conclude that the United Mine Workers, District 12, are engaging, under our decisions, in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission. However, our inquiry does not terminate here, for it is argued that Federal statutory law and decisions of the United States Supreme Court preclude restraining the conduct engaged in by the union.

It is maintained by the Mine Workers that the circuit court decree violates their right to engage in concerted activities for the purpose of their mutual aid and protection under section 157 of the Labor Management Act. (29 U.S. C.A. 157.) However, if the conduct attacked was properly determined to constitute the unauthorized practice of law and is not protected from proscription by constitutional mandate, it cannot seriously be argued that general statutory language granting the right to union members "to engage in * * * concerted activities for the purpose of collective bargaining or other mutual aid or protection" restricts the States from regulating the practice of law. (*In Re Brotherhood of Railroad Trainmen*, 13 Ill.2d 391, 395.) Accordingly, the ultimate inquiry herein is whether the decree of the circuit court violates the guarantees of the first and fourteenth amendments to the United States constitution as interpreted by the United States Supreme Court in the cases of *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 12 L. Ed. 2d 89, and *N.A.A.C.P. v. Button*, 371 U.S. 415, 9 L. Ed. [fol. 137] 2d 405.

In *Virginia Railroad Trainmen* the court held that "the First and Fourteenth Amendments protect the right of

the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers. Since the part of the decree to which the Brotherhood objects infringes those rights, it cannot stand; and to the extent any other part of the decree forbids these activities it too must fall." 377 U.S. at p. 8.

The court there (377 U.S. 5, n.9) specifically pointed out that the railroad trainmen were objecting to only those portions of the decree encompassed by the language of the holding, as the brotherhood had denied that it was engaging in practices forbidden by our decree in *In Re Brotherhood of Railroad Trainmen*, 13 Ill.2d 391. Accordingly, that holding does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims. As a consequence, we do not read *Virginia Railroad Trainmen* as constitutionally protecting the conduct we are concerned with here, i.e. employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission. The circuit court decree in question here does not attempt to restrain the union from advising its members to seek legal advice or from recommending particular attorneys thought competent to handle workmen's compensation claims. As related earlier, our decision in *In Re Brotherhood of Railroad Trainmen* specifically allows such conduct.

In *N.A.A.C.P. v. Button*, the Supreme Court of the United States held that a system devised by the N.A.A.C.P. to furnish and recommend attorneys (who were apparently compensated on a *per diem* basis by the organization in connection with each case handled) to member litigants for the prosecution of civil rights cases was constitutionally protected by the first and fourteenth amendments. However, the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot as such be equated with the bodily injury litigation with which we are concerned here. Also, it is to be noted that an

apparent dearth of Virginia lawyers willing to handle civil rights litigation was deemed of some importance by the Supreme Court, and at least Mr. Justice Douglas was influenced by his conclusion that the State's attempt to characterize the N.A.A.C.P.'s activities as "solicitation" indi- [fol. 138] cated a legislative purpose to penalize that group because of desegregation activities. Further, the majority opinion there read the decree of the Virginia Supreme Court of Appeals "as proscribing any arrangement by which prospective litigants are advised to seek the assistance of particular attorneys." (371 U.S. at page 433.) Under such construction, the decree was deemed violative of the first and fourteenth amendment freedoms of speech and expression.

Such is not the case here, as indicated earlier. We held in the *Illinois Brotherhood* case, and the bar associations now concede, that the Mine Workers may validly advise their members to seek legal advice in connection with these claims and may properly recommend particular attorneys deemed competent to handle such litigation.

Each of the opinions in these cases (*Virginia Railroad Trainmen* and *Button*) recognizes the right of individual States to regulate the practice of law and those who practice it insofar as such regulations do not infringe upon first amendment guarantees relating to freedom of association and expression. If infringement results, it is sustainable upon a showing of a compelling State interest. It seems to us that the compelling quality of the State interest, sufficient to justify State regulation here, may well be something less than the quality required to restrict constitutional litigation of the magnitude embraced in *Button*. We seriously doubt that proscription of this salary arrangement constitutes infringement of constitutionally protected rights of the union members. If it be thought to do so, however, we believe it permissible in view of the interest of the State in controlling standards of professional conduct. The prohibition of payment by the organization of the compensation of the lawyer who represents the individual union mem-

ber seeking redress for his injuries certainly may not be said to be direct suppression of the member's first amendment right to petition the courts. Nor do we think that his right so to do is impaired in a constitutionally objectionable sense unless it can be said that reduction in the net dollar amount remaining to him from the injury award after payment by the member of his attorney fees is a constitutionally impermissible impairment. Such it might be were we dealing with indigent claimants, but we are not, and the net effect upon the union member differs not at all from that upon other injured citizens.

Should the conduct manifested here be allowed, substantial commercialization of the law profession may follow. Arguably, if a labor union may hire salaried attorneys to [fol. 139] represent its individual constituents in occupationally-caused injury litigation, it may expand such activity to encompass legal problems involving domestic relations, contracts, criminal law and other areas of the legal field, for the union collectively is interested in the total welfare of its individual members. It would seem possible, and even likely, that any group of individuals with a similarity of interests would be allowed to associate for the purpose of hiring salaried attorneys to represent its individual members, and that the integrity and personal nature of the attorney-client relationship would thus be substantially impaired, a result we believe contrary to the interest of the public.

The decree of the circuit court of Sangamon County is affirmed.

Decree affirmed.

[fol. 140]

IN THE SUPREME COURT OF ILLINOIS

Appeal from Circuit Court Sangamon County
1572-64

ILLINOIS STATE BAR ASSOCIATION, Appellee,

No. 39642

vs.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Appellant.

JUDGMENT—May 23, 1966

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the decree of the Circuit Court of Sangamon County aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed
my name and affixed the Seal of said court this
day of , 19

Clerk,
Supreme Court of the State of Illinois.

[fol. 141] [File endorsement omitted]

[fol. 142]

IN THE SUPREME COURT OF ILLINOIS

No. 39,642

[Title omitted]

PETITION FOR REHEARING—Filed June 6, 1966

Now come District 12, United Mine Workers of America, by Edmund Burke, their attorney, and present herewith their petition for re-hearing of the above entitled cause and respectfully pray that a rehearing be granted in said cause upon the grounds and for the reasons hereinafter set forth in their petition herewith presented.

Edmund Burke, Attorney for Defendants-Appellants.

[fol. 143]

IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—
September 21, 1966

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

[fol. 144] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 145]

SUPREME COURT OF THE UNITED STATES

No. 884—October Term, 1966

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioner,

v.

ILLINOIS STATE BAR ASSOCIATION et al.

ORDER ALLOWING CERTIORARI—February 27, 1967

The petition herein for a writ of certiorari to the Supreme Court of Illinois is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

3

DEC 20 1966

JOHN F. DAVIS, CLERK

LIBRARY
SUPREME COURT, U.S.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~884~~ 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, *Petitioners,*

v.

ILLINOIS STATE BAR ASSOCIATION, an Illinois Not for Profit Corporation, CURTIS F. PRANGLEY, BERNARD H. BERTRAND, WILLIAM FECHTIG, KOREAN MOVSISIAN, HENRY W. PHILLIPS, WILLIAM C. NICOL, JOHN W. HALLOCK, WATTS C. JOHNSON and MARSHALL A. SUSLER, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF ILLINOIS**

EDMUND BURKE,
217 South Seventh Street
Springfield, Illinois

HARRISON COMBS,
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1966

No. _____

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, *Petitioners,*

v.

ILLINOIS STATE BAR ASSOCIATION, an Illinois Not for Profit
Corporation, et al.,¹

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF ILLINOIS**

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Petitioners, United Mine Workers of America, District
12 (called "United Mine Workers")² pray that a writ of
certiorari issue to review the judgment of the Supreme
Court of the State of Illinois³ entered May 23, 1966 (A.

¹Appellees, other than Illinois State Bar Association, are set forth
below in the text of the Petition and reference thereto is made for such
other Appellees.

²In the trial court, initial and subsequent pleadings were by "Joseph
Shannon, a member of District 12, United Mine Workers of America,
an unincorporated voluntary association and labor union of workers
employed in and around coal mines in the State of Illinois, and . . . all
the members of said association made parties hereto by representation,
by Edmund Burke, their attorney . ." (R. 3, pp. 6, 8, 10, 13, 29). The
Notice of Appeal was by "United Mine Workers of America, District 12,
Defendants-Appellants" (R. 3, p. 32).

1a; R. 19),⁴ as well as the Order of said Court entered September 21, 1966 (A. 13a; R. 22) overruling and denying Petitioners' timely Petition For Rehearing (A. 14a; R. 21) in Case No. 39,642, styled *Illinois State Bar Association, An Illinois Not For Profit Corporation, Curtis F. Prangley, Bernard H. Bertrand, William Fechtig, Korean Mousisian, Henry W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson and Marshall A. Susler, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association, Appellees' v. United Mine Workers of America, District 12, Appellants*, wherein the Supreme Court of Illinois affirmed by Opinion (A. 1a; R. 8-19) the decree of the Circuit Court of Sangamon County, Illinois, entered September 7, 1965 (R. 3, pp. 30-32), overruling and denying United Mine Workers' motion for a summary decree and granting a motion of the Bar Association for a summary judgment (R. 27-29), holding *inter alia*,⁵ that United Mine Workers "are engaging, under our decisions, in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" (A. 10a) and that its affirmance is not precluded either by Section 7 of the Labor Management Relations Act, 1947, as amended (called "Act") [29 USCA 157], the First and Fourteenth Amendments to the Constitution of the United States, or by this Court's *Brotherhood of*

³Sometimes herein the Supreme Court of the State of Illinois is referred to as "Illinois Supreme Court" and the Circuit Court of Sangamon County, Illinois, as "trial court."

⁴A certified appendix record in the case described in the paragraph, including Illinois Supreme Court proceedings, is furnished herewith in accordance with this Court's Rules. Pagination references following the symbol "R." are to that certified record filed in this Court's Clerk's Office. The symbol "A." refers to the Appendix to this Petition.

⁵Collectively called "Bar Association."

⁶The trial court's full injunction is related post, pp. 9-10.

Railroad Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1, and *N.A.A.C.P. v. Button*, 371 U.S. 415.

OPINION BELOW

The opinion of the Illinois Supreme Court appears in Appendix A hereto (pp. 2a-13a); in the certified record (R. 9-18); and it is reported in 219 N.E. 2d 503 (Adv. Op. October 5, 1966). No opinion was rendered by the trial court.

JURISDICTION

Judgment of the Illinois Supreme Court, affirming the trial court, was entered May 23, 1966 (A. 1a). A duly filed Petition For Rehearing was denied September 21, 1966 (A. 14a). This Court's jurisdiction is invoked under 28 USC, Section 1257(3).

QUESTIONS PRESENTED

1. Does a state court decree conflict with rights guaranteed to coal miners, members of an unincorporated labor union, under the First and Fourteenth Amendments to the Constitution of the United States when it holds that such labor union engages in the unauthorized practice of law by employing a duly licensed practicing attorney on a salary basis, and paid by it from membership dues, to represent union members in the prosecution of claims before a state agency for benefits under a state workmen's compensation act where the injured members may, but are not required to, use such services?

2. Is there in this case a compelling state interest which warrants a limitation of such constitutional guarantees?

3. Does the state court decree violate the rights of such members to engage in concerted activities for the purpose of their mutual aid and protection under Section 7, Labor Management Relations Act, 1947?

4. Is there in the record any substantial evidence to sustain the restraining order and decree?

**CONSTITUTIONAL AND STATUTORY PROVISIONS
AND CANONS OF ETHICS INVOLVED**

Pertinent constitutional provisions involved consist of the First and Fourteenth Amendments to the Constitution of the United States. In addition, Section 7, Labor Management Relations Act, 1947, as amended (29 USC, Section 157), Canons 35 and 47, Canons of Ethics of the Illinois State Bar Association and Illinois Revised Stat. (1959), Ch. 148, Sec. 138.21 are involved.⁷

STATEMENT OF THE CASE

**A. PERTINENT PLEADINGS AND HOW THE
FEDERAL QUESTIONS WERE RAISED.**

Illinois State Bar Association, an Illinois corporation "not for profit," and certain of its members, individually and as its Committee on Unauthorized Practice of Law, complained in the Circuit Court of Sangamon County of that State that United Mine Workers of America, District 12, which cannot be licensed to practice law, has been engaged in Sangamon and other Illinois counties "in that in the course of providing services for members it has, and still does, employ an attorney on a salary basis" to represent its members "with respect to claims they may have under the" State's Workmen's Compensation Act and thereby has "offered, furnished, and rendered legal services and advice" (R. 3, p. 3). The Bar Association charges such activities to be in contravention of their rights as attorneys at law, public policy and Illinois laws, tends to "degrade the legal profession," "to bring the same into bad repute in the administration of justice," and "to mislead and defraud the public."

⁷Provisions of the foregoing constitutional amendments, federal statute and Canons 35 and 47 are set forth in Appendix B to the instant Petition (A. 20a-21a).

An answer filed by Joseph Shannon, a member of District 12, and "all the members" thereof "made parties hereto by representation" by their attorney, concedes that "as an association they are not and cannot be licensed to practice law" in Illinois, and denies "they have been for many years engaged in the practice of law," but agrees "they, severally and jointly, employ a competent attorney," a member of the Illinois State and the American Bar Associations, "on a salary basis for the sole purpose of representing them and their dependents before the Industrial Commission in cases of injury and death arising out of and in the course of their employment as coal mine employees, which they and each of them have a legal right to do" (R. 3, p. 9). Except as above stated, the answer denies "they have offered, furnished, or rendered legal services and advice" (R. 3, p. 9).^o

A Motion for Judgment on the Pleadings having been rejected (R. 3, pp. 10, 13), in a Motion by Petitioners for re-consideration thereof (R. 3, pp. 13-14), United Mine Workers asserted that "interference by the State of Illinois, as prayed for by the Plaintiffs, with the employment by the Defendants of attorneys of their own choice to represent them and their dependents, in cases of injury and death arising out of and in the course of their employment, and under the Workmen's Compensation Act, would violate . . . the rights guaranteed them by the First and Fourteenth Amendments to the Constitution of the United States." Upon the trial court's denial thereof (R. 3, p. 15), the same grounds were asserted in a Motion for Summary Decree filed by all members of District 12 "by representation . . . by their attorney" (R. 3, pp. 29-30). When such Summary Judgment Motion was denied (R.

^oA motion to strike certain allegations and for judgment on the pleadings, filed by United Mine Workers, was rejected by the trial court, as was their motion for reconsideration (R. 3, pp. 10-14).

3, p. 30-31) and the trial court issued its injunction, upon Petitioners' appeal to the Illinois Supreme Court (R. 3, pp. 32-33), the grounds were reasserted (R. 5, pp. 3-5) and Petitioners contended the injunction also violated their rights accorded by Section 7, Labor Management Relations Act, 1947 (R. 5, p. 4).

B. THE FACTS

The facts, which are not in dispute, are established by admissions in the pleadings, by Answers to Interrogatories (R. 3, pp. 15-21), and by depositions (R. 3, pp. 22-25; R. 7).

More than fifty years ago, to-wit, on February 18, 1913, delegates elected by the members in each of their local Unions to the twenty-fourth annual convention of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union composed of workers employed in and around coal mines in Illinois (R. 3, p. 8), convened at Peoria in that State and avowed that establishment of a legal department had become an actual necessity and authorized and directed their District Executive Board to establish a legal department to take care of the injury cases of United Mine Workers because "the interests of the members were being juggled and even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees" (R. 3, p. 17). It was recommended at that convention that "such establishment should not mean that members be required to accept its counsel if they desired the services of others" (R. 3, p. 17).

As the Illinois Supreme Court's opinion recites (A. 2a), "For many years, the Mine Workers, a voluntary association, has employed a licensed attorney on a salary basis to represent members and their dependents in connection

with claims for personal injury and death under the Workmen's Compensation Act." On August 5, 1963, a duly convened District 12 Executive Board, pursuant to the 1913 authority and directive, employed an attorney, a member of the Illinois State Bar Association and American Bar Association, on a salary basis, plus actual transportation and hotel expenses, to handle District 12 workmen's compensation cases (R. 3, pp. 17-18, 22).⁹ District 12's President, on September 26, 1963, by letter, advised the salaried attorney it would be his duty, with help of "secretaries in the Springfield and West Frankfort offices and officers of Local Unions," to see that "no member or dependent loses his rights under the Act by reason of failure to avail himself of them in time" and "to represent him before the Commission if he desires your services" but "if he is represented by other counsel you will immediately turn over his file to such counsel" (R. 24-25). The letter also made clear the attorney would "receive no further instructions or directions and have no interference from the District, nor from any officer, *and your obligations and relations will be to and with only the several persons you represent*" (R. 3, p. 25).¹⁰ Representation of employees before the Industrial Commission is the attorney's "total scope" of employment for United Mine Workers (R. 7, p. 3). He is responsible to represent the employees "no matter how many may have claims during any particular year" and the "number of cases has nothing to do with" his salary (R. 7, p. 4); he advances no money on behalf of District 12 or the employees in connection with any hearing held (R. 7, p. 5); he is not required to do any work outside Illinois nor to do any

⁹In addition, the attorney is a State Senator in Illinois (R. 7, p. 2). His competency as an attorney is not questioned by the Bar Association or members of its Unauthorized Practice Committee.

¹⁰Unless otherwise indicated, all emphases herein are supplied.

type of work "other than the representation of" members injured with a claim under Illinois' Workmen's Compensation Act (R. 7, p. 5). Dues are paid by the union members (R. 3, p. 19).

The plan, as described by the current salaried attorney, operates as follows: Injured members are furnished forms by the union entitled "Report to Attorney on Accidents" which advise such injured members to fill out and send the forms to the Legal Department, District 12, United Mine Workers of America. When one of such forms is received by the legal department the salaried attorney presumes that it constitutes a request that he file with the Industrial Commission an application for adjustment of claim on behalf of the injured union member although there is no language appearing on the form which specifically requests that the salaried attorney file such claim. The Application for adjustment of claim is prepared by secretaries in the union offices and when completed is sent by the secretaries directly to the Industrial Commission. In most instances the salaried attorney has not seen or conferred with the injured member at the time the claim is filed with the commission, although it is understood by the union membership that the attorney is available for conferences on certain days at particular locations and many claimants consult with the attorney prior to the hearing (R. 7, p. 20). Between the time the claim is filed and the hearing before the commission, the salaried attorney prepares his case from his file and from examination of the application, usually without having a conference with the union member with regard to the latter's claim, although on occasions the attorney advises claimants as to the need for other medical attention (R. 7, p. 18-19). Ordinarily, the only thing an injured member receives concerning his claim is a notice to ap-

appear before the Industrial Commission, and usually this is the first time the attorney and the injured member come into contact with each other, although this does not occur as to the "major number of persons" (R. 7, p. 19).

The attorney determines what he believes the claim is worth, presents his views to the attorney for the respondent coal company during prehearing negotiation, and attempts to reach a settlement. If the coal company agrees with the Mine Workers' attorney, the latter recommends to the injured member that he accept such resolution of his claim. Final determination is made by claimants (R. 7, p. 22). If a settlement is not reached, a hearing on the merits of the claim is held before the Industrial Commission.

The full amount of the settlement or award is paid directly to the injured member. No deductions are taken therefrom, and the attorney receives no part thereof, his entire compensation being his annual salary paid by the union. Neither the District nor any officer receives any portion of the award (R. 3, p. 19).

C. THE TRIAL COURT'S INJUNCTION AGAINST PETITIONERS

Whereas the trial court rejected United Mine Workers' motion for summary decree, it sustained the Bar Association's Motion for Summary Judgment (R. 3, pp. 27-29, 30-32), finding and concluding in an Order entered September 7, 1965, "there is no genuine issue as to any material fact in this cause" and that "as a matter of law the defendants have been and are engaging in the unauthorized practice of law by retaining an attorney . . . on a salary basis to represent their members with respect to claims that they may have under the provisions of the Workmen's Compensation Act of the State of Illinois" (R. 3, p. 31).

In its September 7, 1965 Order, the trial court also "permanently restrained and enjoined" the "defendants, United Mine Workers of America, District 12, its agents and employees" from (1) giving legal counsel and advice; (2) rendering legal opinions; (3) representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois; (4) employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois; and (5) practicing law in any form either directly or indirectly (R. 3, p. 31-32).

D. THE ILLINOIS SUPREME COURT AFFIRMED THE INJUNCTION BY FINAL JUDGMENT AND OPINION.

Upon Petitioners' appeal, the Illinois Supreme Court, by judgment entered May 23, 1966 (A. 1a) for reasons disclosed in its Opinion (A. 2a-13a), affirmed the trial court; and, as noted, it rejected Petitioners' Petition for Rehearing by Order entered September 21, 1966 (A. 13a).

Though conceding that voluntary associations, such as District 12, are not regarded as legal entities in Illinois (A. 4a), the Illinois Supreme Court avowed that "this is not to say that such voluntary, unincorporated associations may not sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship" (A. 4a-5a). Pointing to its prior holdings that "organizations, including not-for-profit organizations, which hire or retain lawyers to represent their individual members in legal matters are ordinarily engaging in the unauthorized practice of law," it recognized

its thesis therefor was that no relation of trust and confidence essential to the attorney-client relationship existed between the membership of those associations and their attorneys (A. 5a) and that " 'Legal services cannot be capitalized for the profit of laymen, corporate or otherwise' " and " 'should not be commercialized . . as if that service were a commodity which could be advertised, bought, sold and delivered' " (A. 5a).

The Illinois Supreme Court concedes "There can be no question of the hazards involved in coal mining," and that "undoubtedly the possibility exists that injured coal miners untutored in the intricacies of workmen's compensation law might accept wholly inadequate settlements" (A. 8a). Though avowing that "Benefit to the miner, in that compensation of counsel under the plan here in effect is from the union treasury rather than the injured member or his family, is not be easily disregarded," and that it is not denied "that the organization has an active interest in securing fair treatment for its members" (A. 8a), the Illinois Supreme Court nonetheless regarded these factors as "insufficient to override the governing principles in the attorney-client relationship" (A. 9a).

It must be noted the Illinois Supreme Court regarded as "relevant" to its inquiry, the Bar Association's Canons 35 and 47 (A. 21a) which were involved in this Court's *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar* (377 U.S. 1, 6, fn. 10), which, in substance, prohibits a lay intermediary from engaging in the law practice and forbids a lawyer's permitting his services or name to be used in aid of any such unauthorized practice of law. Canon 35 provides that "A lawyer's relation to his client should be personal, and the responsibility should be direct to the client" and it permits

employment of attorneys by "an association club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested" but it excludes "legal services to the members of such an organization in respect to their individual affairs" (A. 21a).

The Illinois Supreme Court condemned the legal aid plan of United Mine Workers because "The lawyer is not paid for his services by the client; his salary is paid by the association" (A. 9a), and because (although there is no factual predicate therefor) "the interests of the employer and the client" and "the interests of the union, collectively, may extend beyond the interest of the injured member" (A. 9a). These factors, it believed, "all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties" (A. 9a). Thus, the Illinois Supreme Court concluded that "United Mine Workers, District 12, are engaging, under our decisions, in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" (A. 10a).

To the United Mine Workers' claim that the trial court's decree violated their right to engage in concerted activities for the purpose of their mutual aid and protection under Section 7, Labor Management Relations Act, 1947 (29 USC 157), the Illinois Supreme Court argued that if the condemned conduct is not constitutionally protected, "it cannot seriously be argued" that the statute just adverted to "restricts the State from regulating the practice of law". (A. 10a).

The Illinois Supreme Court rejected United Mine Workers' contention that the trial court's decree fell

within the proscriptions enunciated by this Court's *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 and *N.A.A.C.P. v. Button*, 371 U.S. 415. The *Trainmen* "holding does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims," argued that Court (A. 11a) and therefore, it declared, "we do not read *Virginia Railroad Trainmen* as constitutionally protecting . . . employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission" (A. 11a). Similarly, it rejected the applicability of *Button*, and though noting that therein attorneys furnished by N.A.A.C.P. "were apparently compensated on a *per diem* basis by the organization," the Illinois court undertook distinguishment by its statement that "the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot . . . be equated with the bodily injury litigation . . . concerned here" (A. 11a), and by avowing that "Mine Workers may validly advise their members to seek legal advice in connection with these claims and may properly recommend particular attorneys deemed competent to handle such litigation" (A. 12a).

The Illinois Supreme Court found constitutional infringement, if any, justified by the State's interest in controlling standards of professional conduct (A. 12a). It declared, "The prohibition of payment by the organization" of the lawyer's compensation "may not be said to be direct suppression of the member's first amendment right to petition the courts"; and that there is no constitutional objection "unless it can be said that reduction in the net dollar amount remaining to him from the injury award after payment by the member of his attorney fees

is a constitutionally impermissible impairment" (A. 13a). Admitting this would be true in case of indigent claimants, the appellate court declared "the net effect upon the union members differs not at all from that upon other injured citizens" (A. 13a).

As a further justification, not warranted by the facts, the Illinois Supreme Court speculated that "substantial commercialization of the law profession may follow" if the legal aid plan were allowed and that there may be an expansion of activity to encompass "legal problems involving domestic relations, contracts, criminal law and other areas of the legal field" and that "the integrity and personal nature of the attorney-client relationship would thus be substantially impaired, a result" the Court believed "contrary to the" public interest (A. 13a).

REASONS FOR GRANTING THE WRIT

- I. THE ILLINOIS SUPREME COURT'S OPINION AND JUDGMENT ARE IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION AND SECTION 7, LABOR MANAGEMENT RELATIONS ACT, 1947, AND REPRESENT AN INCORRECT INTERPRETATION OF PRIOR IMPORTANT DECISIONS OF THIS COURT.**

The legal aid plan involved herein was created fifty-three years ago, as the record shows, through necessity because United Mine Workers were "required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees" (R. 3, p. 17). Traditionally union members have looked to their labor union for help in problems associated with working conditions. It is inconceivable that anything could be so intimately related to the aid and protection of men working in so hazardous an industry as coal mining, with so high an incidence of injuries, as wise provision in advance for competent and loyal legal assistance in the event of disabling injury or death arising out of and in the course of their employ-

ment. It was only natural that delegates elected to District 12's Convention in 1913 should have been concerned about the dissipation through attorney fees of moneys recovered for injuries arising in the course of their employment; and it was normal that it should become a compelling group interest, and not merely the personal problem of an injured miner. It was only natural, too, that miners in convention should have sought relief in their labor union by directing District 12 officers to establish a legal department. As stated by Justice Carter in his dissent in *Hildebrand v. State of California*, 225 P. 2d 508, 515 (Calif., 1950), a dissent referred to in this Court's *Trainmen* (377 U.S. 7, fn. 13), "It is nothing more than a proper joining of forces for the accomplishment of a proper legal objective of mutual protection." This accords, too, with Section 7, Labor Management Relations Act, 1947, which provides that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . ." (A. 20a-21a). And, protection today of their legal rights at a minimum cost is as important as it was in 1913, just as injury today in their employment impairs their source of economic sustenance as it did in 1913.

United Mine Workers' annual earnings provide them with only a modest income. In 1964, United Mine Workers in District 12 numbering 14 000 of which 8,500 are working members (R. 7, p. 37), filed 416 claims for workmen's compensation, representing 4.8% of the active membership; and in the same year claims of 5.7% of the active membership or 487 claims of members were disposed of (R. 3, p. 25).

Though the Illinois Supreme Court rejected the contention that since District 12 is not a legal entity separate and apart from its members and the attorney is merely employed collectively by the members (A. 4a), nevertheless union members pay dues into their union and in a very real sense they are paying, or helping to pay, the attorney so as to have him available in litigation related to their employment if they desire the attorney's services. There is just as close an attorney-client relationship between the attorney and the claimants he represents as there is between any workmen's compensation claimant and any other attorney, the only difference being that in the one instance the attorney fees are paid by a group of individuals jointly through their union, and in the other instance the fee is paid by the individual or often by someone else. Indeed, in the instant case when a claimant desires the attorney's representation made available by himself and his fellow-miners, and the attorney assumes the responsibility, the personal relationship exists and the attorney's professional and ethical obligations attach themselves to that relationship. This is emphasized herein by the undisputed fact that, under the attorney's employment, he receives no "instructions or directions" and has "no interference from the District, nor from any officer" and the attorney's "obligations and relations will be to and with only the several persons" he represents (R. 3, p. 25). Thus, it is obvious and clear that there has not been any violation of the Canons involved herein since there is no employment of an attorney through an intermediary.

This Court, in *Trainmen's* (377 U.S. 1, 5) clear language, mandated that the First Amendment's "guarantees of free speech, petition and assembly give [in this case, United Mine Workers] the right to gather together for

the lawful purpose of helping and advising one another in asserting" statutory rights. While *Trainmen's* concern was with a federal enactment, the Court's enunciation is equally applicable to a state workmen's compensation statute designed to provide coal miners and other workmen with benefits for injuries sustained by them in exchange for common-law damages; and this is emphasized by the Court's further avowal that "statutory rights . . . would be vain and futile if the workers could not talk together freely as to the best course to follow" (377 U.S. 5-6).

Nor did this Court stop with these avowals in *Trainmen*. Its continued guidelines fit precisely what United Mine Workers did in the instant case in the establishment of their legal department. "The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel" and "That is the role played by the members who carry out the legal aid program" (377 U.S. 6).

Under well-established and long-followed doctrine in Illinois, a voluntary unincorporated labor union has no existence apart from its members." *Montgomery-Ward & Co. v. Franklin Union Local No. 4*, 323 Ill. App. 590, 56 N.E. 2d 476, 477, held "the question involved is one of substance . . . and not of procedure."¹² But the Illinois Supreme Court had to, and willingly did, discard that rule in order to cast District 12 into an entity distinctive

¹¹Title 28, Smith-Hurd Illinois Annotated Statutes (Permanent Ed.) provides that "the common law of England so far as the same is applicable and of a general nature . . . shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority."

¹²See *Schwartz v. Broadcast Music, Inc.*, DC, S.D. N.Y., 1954, 16 F.R.D. 31, holding that each individual member of an unincorporated association is a client of the association's lawyer.

from its membership, arguing "this is not to say that such voluntary, unincorporated associations may not sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship" (A. 4a-5a).

But even if District 12 be regarded as a jural entity, such characterization does not dissipate the concern the union has with the protection and welfare of its members. As representative of its members employed in the coal industry the union bargains collectively in behalf of the members as their agent as part of its program of improving their working conditions. For many years the union has been active in the enactment, improvement and enforcement of workmen's compensation statutes. The union's interest in the welfare of its members, singly and collectively, does not cease because a member has been injured. The injured member's ability to resume work upon recovery or rehabilitation, where recovery is not possible, and his welfare and that of his dependents have been of primary concern to the Union; and its long struggle "to provide security for employees and their families to enable them to meet problems arising from unemployment, illness, old age or death" through a welfare and retirement fund is reflected in the judicial history of this Court's *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 468, and other cases.¹³

Though avowing (A. 12a) "the Mine Workers may validly advise their members to seek legal advice in connection" with their compensation claims and "may properly recommend particular attorneys deemed com-

¹³See *Penello, Regional Director v. Int. Union, UMWA*, DC, D.C., 1950, 88 F. Supp. 935; *U.S. v. Int. Union, UMWA*, DC, D.C., 1950, 89 F. Supp. 187; *U.S. v. Int. Union, UMWA*, DC, D.C., 1950, 89 F. Supp. 179.

petent to handle such litigation," the Illinois Supreme Court condemned District 12's "employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" (A. 10a), emphasizing that "The lawyer is not paid for his services by the client; his salary is paid by the association" (A. 9a), ignoring that such employment was at the direction and behest of the coal miner members and as their bargaining agent. To the United Mine Workers' contention that this Court's *Trainmen* (377 U.S. 1) and *Button* (371 U.S. 415) cases compelled a reversal of the trial court's injunctive decree, the Illinois Supreme Court's response was that *Trainmen* "does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims"; that *Trainmen* does not constitutionally protect the "employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission" and that *Button's* "constitutionally protected political expression . . . cannot . . . be equated with the bodily injury litigation with which we are concerned here" (A. 11a). To reach its conclusion, the Illinois Supreme Court of necessity had to ignore and evade this Court's crucial language in *Trainmen*, indicating its imprimatur upon the very activity condemned by the Illinois Supreme Court herein, and reading (377 U.S. 7):

"It is interesting to note that in Great Britain unions do not simply recommend lawyers to members in need of advice; *they retain counsel, paid by the union, to represent members in personal lawsuits, a practice similar to that which we upheld in NAACP v. Button, supra*" (371 U.S. 415).

So, too, in regard to *Button*, the Illinois Supreme Court failed to follow this Court's admonishment therein when

it said (371 U.S. 429) "a State cannot foreclose the exercise of constitutional rights by mere labels." Yet, the Illinois Supreme Court did precisely that in its quotation above, for it is not a matter of equating protected political expression "with the bodily injury litigation," as the Illinois court stated (A. 11a), but rather implementing that litigation in terms of the First Amendment's guarantees of free speech, petition and assembly under which coal miners have the right to gather together to help and advise one another in the assertion of their legal rights under the Illinois Workmen's Compensation Act and "to select a spokesman from their number who could be expected to give the wisest counsel" (377 U.S. 5-6). In *Trainmen* (377 U.S. 7), this Court said that "Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries . . . and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics." The Illinois Supreme Court's condemnation of District 12's financial payment to the attorney on a salary basis could well place injured coal miners in a posture which would "bar them from resorting to the courts to vindicate their legal rights"; and, as *Trainmen* declares (377 U.S. 7), "The right to petition the courts cannot be so handicapped." Both *Trainmen* and *Button* make positive that a state is forbidden by the Fourteenth Amendment from infringing upon First Amendment rights.

Only recently the Virginia Supreme Court, interpreting this Court's *Trainmen* case, held that the ruling therein required a broad interpretation, saying that *Trainmen*'s mandate "was issued to protect the right to conduct activities under a benevolently inspired plan con-

cerned with the prosecution of rights" under statutes "where the State had failed to show an appreciable contrary public interest." *Brotherhood of Railroad Trainmen v. Commonwealth of Virginia ex rel. Virginia State Bar*, 149 S.E. 2d 265, 271 (Va., June 13, 1966).

Thus, Petitioners submit that the trial court's injunctive decree and the Illinois Supreme Court's affirmation thereof which enjoined "defendants, United Mine Workers of America, District 12, its agents and employees" from (1) giving legal counsel and advice; (2) rendering legal opinions; (3) representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois; (4) employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois; and (5) practicing law in any form either directly or indirectly (R. 3, p. 31-32), and the latter court's opinion, not only are erroneous in holding that the conduct involved herein is violative of Canons 35 and 47, but they are in contravention of the rights guaranteed under the First and Fourteenth Amendments to the Federal Constitution and are at variance with the holdings in *Trainmen* and *Button*, as well as the rationale thereof.

If the Illinois decision is permitted to stand, laborers with injuries received in the course of and resulting from their employment, will be required, when they are both suffering physical handicap and inability to earn a livelihood, to share with a lawyer whatever compensation they may receive, inadequate though it be, as those who are knowledgeable with workmen's compensation benefit

awards are fully aware. Such a situation imposed upon coal miners and other laboring groups, coupled with the subversion of constitutional rights, accentuates the need of review of the Illinois Supreme Court's judgment and opinion herein by issuance of the writ sought herein.

II. CONTRARY TO THE ILLINOIS SUPREME COURT, THERE IS NO COMPELLING STATE INTEREST TO WARRANT A LIMITATION OF PETITIONERS' CONSTITUTIONAL RIGHTS. THE COURT'S JUDGMENT AND OPINION ARE IN CONFLICT WITH PUBLIC POLICY AS EXPRESSED BY THE LEGISLATURE IN THE WORKMEN'S COMPENSATION STATUTE.

The Illinois Supreme Court believed, and Petitioners say erroneously, that its affirmance of the trial court's decree (*ante*, pp. 9-10), is "permissible in view of the interest of the State in controlling standards of professional conduct" (A. 12a).

The Court's belief is that "substantial commercialization of the law-profession *may* follow" (A. 13a) if District 12 is permitted to employ an attorney for the purposes discussed. Yet, in view of the fact that the instant record contains no suggestion thereof in an experience of 53 years, it is obvious that the Court's statement is imaginary rather than real. Just how there could be commercialization of the legal profession under the undisputed facts herein, the Illinois court does not bother to explain. The reason for such omission is obvious from the facts which show that employee members seeking the attorney's services need not, and indeed do not, pay anything out of the awards; the attorney is forbidden to charge or receive from the individual employee any portion of the moneys received as benefits; and the Union receives no portion of the recovered amount.

United Mine Workers would be restricted in the exercise of their constitutional rights, according to the Illinois

court, because "Arguably," the union "may expand such activity to encompass legal problems involving domestic relations, contracts, criminal law and other areas of the legal field, for the union collectively is interested in the total welfare of its individual members" (A. 13a). The instant record is wholly devoid of anything to justify such speculation and conjecture. The restraints upon United Mine Workers by the injunctive decree of the trial court, sanctioned by the appellate court, are based, not upon facts, but upon a misapplied legal fiction, speculation and imagination.

The compelling state interest which the Illinois court abortively avers finds full challenge in public policy as expressed by the Illinois legislature in its workmen's compensation statute. First enacted in 1912, a principal objective thereof sought to make certain that no one takes anything out of an award except the injured person or his dependents, if he be deceased. To that end, the Illinois legislature provided in the Act's Section 21 that "No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages . . ."; and even the Illinois Public Aid Commission is not allowed to reimburse itself out of an award.

It was to help effectuate those objectives that Union members, through their convention of delegates, authorized and directed their District Executive Board to establish a legal department so as to make legal counsel available to members who desired, but who were not required to use, those services in employment injury cases.

The chief concern should not be, as the Illinois Supreme Court has appraised it, i.e., by the method the attorney

receives his pay. Indeed, since the decision herein predicates the desired personal relationship between attorney and client upon payment of an attorney fee, the legal profession is thus cast in terms of a business and reduced to such a status.

Totally at variance with the results in the instant case as achieved by two Illinois courts is the American Bar Association's Standing Committee on Professional Ethics recommendation that

"The Canons of Professional Ethics must be adaptable to the times in which we live and our Committee's interpretations must recognize modern methods and procedures."¹⁴

III. THE INJUNCTIVE DECREE AFFIRMED BY THE ILLINOIS SUPREME COURT IS WITHOUT FACTUAL SUPPORT.

Not only are the reasons assigned by the Illinois Supreme Court as to the compelling state interest without basis, but, even if the Illinois courts were correct concerning the compensation work (which United Mine Workers deny), still no word in the record sustains the full scope of the injunction directed at District 12, "its agents and employees" (*ante*, pp. 9-10), particularly with reference to the inhibitions concerning (1) giving legal counsel and advice; (2) rendering legal opinions; (3) representing themselves in any claims other than under the compensation act; (4) employing attorneys to represent them in any other kinds of claims; and (5) practicing law in any form directly or indirectly.

Where, as here, these matters are so interwoven with the federal questions presented, this Court has recognized its jurisdiction "is plain." *Enterprise Irrig. Dist. v. Farmers' Mut. Canal Co.*, 243 U.S. 157, 164.

¹⁴Committee Opinion No. 295, dated August 1, 1959.

CONCLUSION

For the reasons assigned, Petitioners pray that the Petition for Writ of Certiorari should be granted and that the writ issue to review the decision and judgment of the Illinois Supreme Court, entered in Case No. 39,642 on May 23, 1966, as well as its Order entered September 21, 1966 overruling and denying Petitioners' Petition for Rehearing.

Respectfully submitted,

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Dated: December 19, 1966

APPENDIX

7

THE UNITED STATES OF AMERICA

DEPARTMENT OF AGRICULTURE

APPENDIX

APPENDIX A

Judgment

Filed May 23, 1966

UNITED STATES OF AMERICA

STATE OF ILLINOIS SUPREME COURT, ss.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the ninth day of May in the year of our Lord, one thousand nine hundred and sixty-six, within and for the State of Illinois.

BE IT REMEMBERED, that, to-wit: on the 23rd day of May 1966, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

ILLINOIS STATE BAR ASSOCIATION, *Appellee*

No. 39642

vs.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, *Appellant*

Appeal from Circuit Court Sangamon County 1572-64

THEREFORE, it is considered by the Court that the decree of the Circuit Court of Sangamon County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

Opinion

Filed May 23, 1966

BE IT REMEMBERED, that afterwards, to-wit: on the 23rd day of May, A.D. 1966, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

Docket No. 39642—Agenda 28—March, 1966.

Illinois State Bar Association *et al.*, Appellees, v. United Mine Workers of America, District 12, Appellant.

PER CURIAM: The Illinois State Bar Association and others, individually and as members of the Committee on Unauthorized Practice of Law, filed a complaint in the circuit court of Sangamon County seeking to restrain defendant, United Mine Workers of America, District 12, from engaging in activities alleged to constitute the unauthorized practice of law. The trial court entered a summary decree granting the relief requested. From that determination the Mine Workers appeal, contending that the decree violates the first and fourteenth amendments to the United States constitution.

The facts are substantially undisputed. For many years, the Mine Workers, a voluntary association, has employed a licensed attorney on a salary basis to represent members and their dependents in connection with claims for personal injury and death under the Workmen's Compensation Act. It is understood and provided that members may employ other counsel if they so desire. Selection of the attorney was made by the Executive Board of District 12, and the terms of his employment agreed upon by the acting president and the attorney pursuant to board authorization. The letter from the former to the latter outlining the terms of employment contains the following sentence: "You will receive no further instructions or directions and have no interference

from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent."

The plan, as described by the current salaried attorney, operates as follows: Injured members are furnished forms by the union entitled "Report to Attorney on Accidents" which advise such injured members to fill out and send the forms to the Legal Department, District 12, United Mine Workers of America. When one of such forms is received by the legal department the salaried attorney presumes that it constitutes a request that he file with the Industrial Commission an application for adjustment of claim on behalf of the injured union member although there is no language appearing on the form which specifically requests that the salaried attorney file such claim. The Application for adjustment of claim is prepared by secretaries in the union offices and when completed is sent by the secretaries directly to the Industrial Commission. In most instances the salaried attorney has not seen or conferred with the injured member at the time the claim is filed with the commission, although it is understood by the union membership that the attorney is available for conferences on certain days at particular locations. Between the time the claim is filed and the hearing before the commission, the salaried attorney prepares his case from his file and from examination of the application, usually without having a conference with the union member with regard to the latter's claim. Ordinarily, the only thing an injured member receives concerning his claim is a notice to appear before the Industrial Commission, and usually this is the first time the attorney and the injured member come into contact with each other.

The attorney determines what he believes the claim is worth, presents his views to the attorney for the respondent coal company during prehearing negotiation, and attempts to reach a settlement. If the coal company agrees with the Mine Workers' attorney, the latter recommends to the

injured member that he accept such resolution of his claim. If a settlement is not reached, a hearing on the merits of the claim is held before the Industrial Commission.

The full amount of the settlement or award is paid directly to the injured member. No deductions are taken therefrom, and the attorney receives no part thereof, his entire compensation being his annual salary paid by the union.

The question for decision is whether the above related activities amount to the unauthorized practice of law by the Mine Workers under prior determinations of this court, and, if so, whether such activity is nevertheless protected by the first and fourteenth amendments to the United States constitution.

It may be noted here that the services rendered the union members in the handling of their compensation claims were legal services and that one who performs them is engaged in the practice of law. *People ex rel. Chicago Bar Association v. Goodman*, 366 Ill. 346.

It is argued by the Illinois State Federation of Labor and Congress of Industrial Organizations, AFL-CIO, as *amicus curiae*, that since the United Mine Workers, District 12, is a voluntary, unincorporated association and not a legal entity separate and apart from its constituency, there is no problem concerning the existence of a lay intermediary between the individual member and the attorney. Under this view, the attorney is merely employed collectively by the members of the association to present claims before the Industrial Commission. While it is correct that it has been held that a voluntary association such as the Mine Workers is not a legal entity amenable to process and suit at law (*Cahill v. Plumbers, Gas and Steam Fitters' and Helpers' Local 93*, 238 Ill. App. 123, 127; *Chicago Grain Trimmers Association v. Murphy*, 389 Ill. 102, 109; 4 Am. Jur., Associations & Clubs, par. 41), this is not to say that such voluntary, unincorporated associations may not sufficiently

partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship. (As to whether unincorporated labor unions should be treated as "entities," see *The Legal Status and Suability of Labor Organizations*, 28 *Temple Law Quarterly* I.) In any event we are concerned here not with legal forms, but activities of the association. It is the latter which must determine whether the association is engaging in the unauthorized practice of law. See *Rhode Island Bar Association v. Automobile Service Association*, 55 R. I. 122, 179 Atl. 139.

It is clear that under the prior decisions of this court, organizations, including not-for-profit organizations, which hire or retain lawyers to represent their individual members in legal matters are ordinarily engaging in the unauthorized practice of law. (*People ex rel. Courtney v. Association of Real Estate Tax-payers of Illinois*, 354 Ill. 102; *People ex rel. Chicago Bar Association v. The Motorists Association of Illinois*, 354 Ill. 595; *People ex rel. Chicago Bar Association v. Chicago Motor Club*, 362 Ill. 50.) The underlying reasons for such conclusion are that the "relation of trust and confidence essential to the relation of attorney and client did not exist between the members of the respondent association and its attorneys, and whatever relation of trust and confidence existed was between the membership and the association." (*People ex rel. Courtney v. Association of Real Estate Tax-payers*, p. 109.) And, as was said in *Chicago Motor Club*, p. 57: "Legal services cannot be capitalized for the profit of laymen, corporate or otherwise, directly or indirectly, in this State. In practically every jurisdiction where the issue has been raised it has been held that the public welfare demands that legal services should not be commercialized, and that no corporation, association or partnership of laymen can contract with its members to supply them with legal services, as if that service were a commodity which could be advertised, bought, sold and delivered."

See, also, *People ex rel. Chicago Bar Association v. Goodman*, 366 Ill. 346, a case involving a lay respondent's employment of lawyers to represent injured persons whose workmen's compensation claims respondent was attempting to settle, where the court said at page 356: "The faithful observance of the fiduciary and confidential relationship between attorney and client is one of the greatest traditions of the legal profession. In Goodman's business that relationship is absent as to the litigant whom the attorney employed by Goodman purportedly represents. The respondent is the attorney's real client and paymaster, and the one to whom the attorney owes allegiance."

Thought to be of paramount importance to the public is the preservation of the integrity of the lawyer-client relationship involving the highest degree of trust and confidence, and an unswerving dedication of the lawyer's abilities to the interests of his client. Intervention in this relationship of third-party organizations by whom lawyers are directly employed and compensated to handle personal claims of organization members has generally been prohibited. See cases in 7 Am. Jur. 2d, p. 100; 157 A.L.R. 292.

In *In Re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, this court applied the foregoing considerations to an organization similar in structure to the United Mine Workers association. There, the brotherhood, through its Legal Aid Department, had established a nationwide scheme whereby "regional counsel" were selected by the Brotherhood. These attorneys paid the departmental operating costs and were, in turn, recommended to individual brotherhood members as competent to represent them on personal injury and death claims. In that case this court held impermissible any "financial connection of any kind between the Brotherhood and any lawyer" in connection with personal injury claims of brotherhood members. However, the court specifically set forth an alternate plan which would be permissible. Reference thereto is appropriate here. It was there

stated: "The Brotherhood has a legitimate interest in investigating the circumstances under which one of its members has been injured. That interest antedates the occurrence of any particular injury. We are of the opinion that the Brotherhood may properly maintain a staff to investigate injuries to its members. It may so conduct those investigations that their results are of maximum value to its members in prosecuting their individual claims, and it may make the reports of those investigations available to the injured man or his survivors. Such investigations can be financed directly and without undue burden by the 218,000 members of the Brotherhood. The Brotherhood may also make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal advice before making a settlement and second, the names of attorneys who, in its opinion, have the capacity to handle such claims successfully." (13 Ill. 2d at pages 397-98). We also specifically refuted the argument, presented again here, that the collective interest of the members of the union in recovering adequate compensation for bodily injury and death is largely synonymous with the individual members' interests concerning their particular claims, holding that, "While these considerations have weight, they are insufficient in our opinion to override the principles that must govern the members of the legal profession in their relations with clients."

Also relevant to our inquiry here are the Canons of Ethics of the Illinois State Bar Association and the Chicago Bar Association. While such canons do not have the force and effect of judicial decision or statutory law, they nevertheless are of interest to this court, provide guidelines to members of the profession and are helpful in reaching determinations in particular cases. Canons 35 and 47 provide:

"(35) Intermediaries. The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and

qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs. . . .

"(47) Aiding the Unauthorized Practice of Law. No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."

These canons are similar to those of the American Bar Association which have been interpreted by that group as precluding the employment arrangement now before us. (Informative Opinion A of 1950 of the American Bar Association Standing Committee on Unauthorized Practice of Law.)

In our consideration of this case, the policy arguments of the Mine Workers and *amici* are impressive. There can be no question of the hazards involved in coal mining, and undoubtedly the possibility exists that injured coal miners untutored in the intricacies of workmen's compensation law might accept wholly inadequate settlements. Benefit to the miner, in that compensation of counsel under the plan here in effect is from the union treasury rather than the injured member or his family, is not to be easily disregarded, nor is it to be denied that the organization has an active interest in securing fair treatment for its members. Arrangements whereby common interest groups provide legal services for their membership have respected advocates and are recognized as proper in varying forms by some States. (See

Markus, Group Representation by Attorneys as Misconduct, 14 Cleveland-Marshall Law Review, 1, (1965).) But, persuasive as these and other considerations are, we believe as in *In Re Brotherhood of Railroad Trainmen* that they are insufficient to override the governing principles in the attorney-client relationship.

That relationship is pre-eminently personal in nature and the fundamental duty of an attorney involves undiluted loyalty to the client whom he serves and whose interests he protects, considerations we believe largely absent where the attorney has been selected and hired on a salary basis by a lay intermediary to represent individual clients. It is basically a master-servant relationship, but as the New York Court of Appeals has put it (*In Re Cooperative Law Co.* 198 N.Y. 479, 483-4, 92 N.E. 15-16), it is such "in a limited and dignified sense, and it involves the highest trust and confidence." In the case before us, the lawyer is not directly employed by the miner for whose peculiarly personal and individual injury he seeks compensation; he is chosen and employed by the officers of the union. The lawyer is not paid for his services by the client; his salary is paid by the association. Even though the terms of the letter of employment indicate no organizational direction will be given, the interests of the employer and the client in a given case may or may not be identical, since as the AFL-CIO *amicus* brief indicates, the interests of the union, collectively, may extend beyond the interest of the injured member. Conceivably, the interest of the former might be best served by utilizing a particular case as a testing vehicle for appellate review of untried legal theories in the hope of securing a determination beneficial to union members collectively in future litigation, whereas the injured member may prefer a proffered settlement deemed wholly adequate by him. It is manifest, we believe, that these factors all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties. We, of course, do not deal here with the

totally different case of a salaried lawyer for indigent clients.

We therefore conclude that the United Mine Workers, District 12, are engaging, under our decisions, in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission. However, our inquiry does not terminate here, for it is argued that Federal statutory law and decisions of the United States Supreme Court preclude restraining the conduct engaged in by the union.

It is maintained by the Mine Workers that the circuit court decree violates their right to engage in concerted activities for the purpose of their mutual aid and protection under section 157 of the Labor Management Act. (29 U.S.C.A. 157.) However, if the conduct attacked was properly determined to constitute the unauthorized practice of law and is not protected from proscription by constitutional mandate, it cannot seriously be argued that general statutory language granting the right to union members "to engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection" restricts the State from regulating the practice of law. (*In Re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 395.) Accordingly, the ultimate inquiry herein is whether the decree of the circuit court violates the guarantees of the first and fourteenth amendments to the United States constitution as interpreted by the United States Supreme Court in the cases of *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 12 L.Ed. 2d 89, and *N.A.A.C.P. v. Button*, 371 U.S. 415, 9 L. Ed. 2d 405.

In *Virginia Railroad Trainmen* the court held that "the First and Fourteenth Amendments protect the right of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific

lawyers. Since the part of the decree to which the Brotherhood objects infringes those rights, it cannot stand; and to the extent any other part of the decree forbids these activities it too must fall." 377 U.S. at p. 8.

The court there (377 U.S. 5, n.9) specifically pointed out that the railroad trainmen were objecting to only those portions of the decree encompassed by the language of the holding, as the brotherhood had denied that it was engaging in practices forbidden by our decree in *In Re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391. Accordingly, that holding does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims. As a consequence, we do not read *Virginia Railroad Trainmen* as constitutionally protecting the conduct we are concerned with here, i.e. employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission. The circuit court decree in question here does not attempt to restrain the union from advising its members to seek legal advice or from recommending particular attorneys thought competent to handle workmen's compensation claims. As related earlier, our decision in *In Re Brotherhood of Railroad Trainmen* specifically allows such conduct.

In *N.A.A.C.P. v. Button*, the Supreme Court of the United States held that a system devised by the N.A.A.C.P. to furnish and recommend attorneys (who were apparently compensated on a *per diem* basis by the organization in connection with each case handled) to member litigants for the prosecution of civil rights cases was constitutionally protected by the first and fourteenth amendments. However, the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot as such be equated with the bodily injury litigation with which we are concerned here. Also, it is to be noted that an apparent dearth of Virginia lawyers willing to handle civil

rights litigation was deemed of some importance by the Supreme Court, and at least Mr. Justice Douglas was influenced by his conclusion that the State's attempt to characterize the N.A.A.C.P.'s activities as "solicitation" indicated a legislative purpose to penalize that group because of desegregation activities. Further, the majority opinion there read the decree of the Virginia Supreme Court of Appeals "as proscribing any arrangement by which prospective litigants are advised to seek the assistance of particular attorneys." (371 U.S. at page 433.) Under such construction, the decree was deemed violative of the first and fourteenth amendment freedoms of speech and expression.

Such is not the case here, as indicated earlier. We held in the *Illinois Brotherhood* case, and the bar associations now concede, that the Mine Workers may validly advise their members to seek legal advice in connection with these claims and may properly recommend particular attorneys deemed competent to handle such litigation.

Each of the opinions in these cases (*Virginia Railroad Trainmen* and *Button*) recognizes the right of individual States to regulate the practice of law and those who practice it insofar as such regulations do not infringe upon first amendment guarantees relating to freedom of association and expression. If infringement results, it is sustainable upon a showing of a compelling State interest. It seems to us that the compelling quality of the State interest, sufficient to justify State regulation here, may well be something less than the quality required to restrict constitutional litigation of the magnitude embraced in *Button*. We seriously doubt that proscription of this salary arrangement constitutes infringement of constitutionally protected rights of the union members. If it be thought to do so, however, we believe it permissible in view of the interest of the State in controlling standards of professional conduct. The prohibition of payment by the organization of the compensation of the lawyer who represents the individual union member seeking redress

for his injuries certainly may not be said to be direct suppression of the member's first amendment right to petition the courts. Nor do we think that his right so to do is impaired in a constitutionally objectionable sense unless it can be said that reduction in the net dollar amount remaining to him from the injury award after payment by the member of his attorney fees is a constitutionally impermissible impairment. Such it might be were we dealing with indigent claimants, but we are not, and the net effect upon the union member differs not at all from that upon other injured citizens.

Should the conduct manifested here be allowed, substantial commercialization of the law profession may follow. Arguably, if a labor union may hire salaried attorneys to represent its individual constituents in occupationally-caused injury litigation, it may expand such activity to encompass legal problems involving domestic relations, contracts, criminal law and other areas of the legal field, for the union collectively is interested in the total welfare of its individual members. It would seem possible, and even likely, that any group of individuals with a similarity of interests would be allowed to associate for the purpose of hiring salaried attorneys to represent its individual members, and that the integrity and personal nature of the attorney-client relationship would thus be substantially impaired, a result we believe contrary to the interest of the public.

The decree of the circuit court of Sangamon County is affirmed.

Decree affirmed.

Rehearing Denied

September 21, 1966

BE IT REMEMBERED, that, to-wit: on the 21st day of September, A.D. 1966, the same being one of the days of the

Term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

ILLINOIS STATE BAR ASSOCIATION, *Appellee*

No. 39642

vs.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, *Appellant*

Appeal from Circuit Court Sangamon County

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

Filed June 6, 1966

No. 39,642.

PETITION FOR REHEARING.

Now come District 12, United Mine Workers of America, by Edmund Burke, their attorney, and present herewith their petition for re-hearing of the above entitled cause and respectfully pray that a rehearing be granted in said cause upon the grounds and for the reasons herein-after set forth in their petition herewith presented.

MAY IT PLEASE THE COURT:

The Court has overlooked the fact that the sole purpose of the establishment, in 1913, by the members, at their convention, of a legal department to take care of their compensation cases, was to effectuate the expressed intent of the Act which provides in Section 21 that

"No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be liable in any way for any lien, debt, penalty or damages."

and to curb the activities of avaricious lawyers and ambulance chasers (Abstract, p. 17, Appellants' Brief, p. 11).

The Court has overlooked, also, what happened to Elery Morse, an elderly man who sustained a permanent partial disability, and who, acting upon bad advice, failed to avail himself of the services of his own compensation department, and fell among Philistines (Abstract p. 26, Brief p. 9).

The Court quotes from the Chicago Motor Club case that the public interest demands that no corporation, or association of laymen contract with it members for legal services as if such service was a commodity, to be advertised, bought and sold. Just how that observation can be applied to the case here at bar is not apparent. The Court has overlooked the fact, that in the record in this case there is not even a suggestion that any legal service was advertised, bought or sold by or to anyone.

The Court stresses at great length the necessity to the attorney-client relation of a personal trust and confidence which, it is intimated, may depend upon who pays the attorney's fee. A lawyer may accept or reject an employment for financial, or any other reasons. But having accepted employment by a client, and assumed the responsibility of representing him, a lawyer whose loyalty to his client would be affected by consideration of who paid his fee, or whether it was paid at all, would be unfit in character, ethics and morals to be a member of the bar at all. The practice of law is a profession, and that is one of the differences between a profession and a business.

After reciting, in the first five paragraphs of its opinion, a summary of the facts in the record, the Court says: "The question for decision is whether the above related

activities amount to unauthorized practice of law". Later, in stating its reasons for answering the question in the affirmative, it assumes facts and reaches conclusions wholly unsupported by the record.

The true facts with reference to the activities of the United Mine Workers of America during the more than fifty years that it has paid many respected members of the legal profession affiliated with the local, state, and American bar associations to represent its members and their dependents desiring legal services solely with reference to injuries and deaths occurring in their employment, are contrary to the assumptions and conclusions indulged.

In Paragraph 16 of its opinion, after pointing out that in this case, even though the terms of the letter of employment of the current attorney indicate no organizational direction will be given, it is *assumed* that a situation may exist where the interest of District 12 and that of the injured member may not be identical, and then the following imaginary situation is presented which the Court suggests might be conceivable, disregarding the fact that there is no evidence indicating that such a situation has ever arisen after fifty years' experience:

"Conceivably, the interest of the former might be best served by utilizing a particular case as a testing vehicle for appellate review of untried legal theories in the hope of securing a determination beneficial to union members collectively in future litigation, whereas the injured member may prefer a proffered settlement deemed wholly adequate by him. It is manifest, we believe, that these factors all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties. We, of course, do not deal here with the totally different case of a salaried lawyer for indigent clients."

If the source of the attorney's fee, or salary, and the imaginary division of professional loyalty, contributed,

in any way, to the Court's conclusion in the case it is wholly without support of any fact in the record. The defendants had no reason to believe it would turn out to be a matter of consideration in the case and no opportunity to offer proof by outstanding attorneys throughout the State showing the undivided loyalty of the miners' attorneys to their clients. This Court should, at least, remand the case to the Circuit Court with instructions to hear evidence upon the question if it considers it of any importance.

The undisputed facts in the record are that the total scope of the attorney's employment is representation of injured and deceased members of the organization and their dependents in matters arising under the Workmen's Compensation Act, and the United Mine Workers of America does not require them to do any other kind of work (Abs. p. 22). No member of the organization is contacted for the purpose of having the attorney represent him (Abs. p. 23). The attorney does not receive instructions or directions or interference from the organization or any of its officers and his obligations and relations are to and with his client only (Abs. p. 25). Injured members are also advised that they may employ other counsel if they desire to do so.

The citation of cases previously decided by this Court involving the unauthorized practice of law by other groups are not persuasive with reference to the situation here presented, because there is no other group in which the relationship between the attorney and his clients are similar to that involved in this case.

The present arrangement made by the United Mine Workers of America was originally inaugurated at its annual convention on February 18, 1913 (Abs. p. 17).

The first Workmen's Compensation Act in the State of Illinois became effective May 1, 1912. The original Act

made it elective as to enterprises and businesses which might be subject to its provisions. However, effective July 1, 1917, it was amended so as to make it applicable to all employers and employees engaged in enterprises and businesses that were declared to be extra-hazardous. The arrangement which is now being charged as involving the illegal practice of law was adopted and suggested by the enactment of the Workmen's Compensation Act, which involves only the relationship between the employer and employee.

There is no basis in the record, or fact revealed by past experience, which would justify the conclusions indulged in the last paragraph of the opinion. In that paragraph it is argued that the conduct here manifested, if allowed, would result in substantial commercialization of the law profession. It is suggested that it may expand to encompass legal problems involving domestic relations, contract, criminal law, and other areas of the legal field, and that it would seem likely that any group of individuals with a similarity of interests would be allowed to associate for the purpose of hiring salaried attorneys to represent its individual members, and that the integrity of the personal nature of the attorney-client relationship would thus be substantially impaired.

The Court has overlooked the fact that there is not one particle of evidence that any of the dire things anticipated and predicted if allowed to continue, have occurred during the fifty years that this conduct has been permitted to continue without interruption and with the approval and commendation of every attorney familiar with the present arrangement.

It is understandable that affluent persons, like the Plaintiffs, who can be proud of their lucrative law practices (Abs. p. 2), and others in like affluent circumstances, would find it difficult to understand that the \$1,795.00 taken out of the award of Elery Morse (Abs. p. 26), which

even the Public Aid Commission is not permitted to do, might sometime be the difference to him between a frugal but decent living and the indigence referred to by the Court in the closing paragraphs of its opinion.

The Court overlooked other matters which it judicially knows because they are not only matters of current information and common public knowledge, but official statistics provided by law in the reports of the Department of Mines and Minerals of the State of Illinois, that in 1964 there were nine fatal mine accidents and four hundred thirty-five non-fatal accidents involving more than seven days loss of work, and that, not long ago, there were fatal accidents leaving eleven widows and twenty-one orphans; and, that not long before that, there were, after one Illinois mine disaster, one hundred nine widows and one hundred ninety-five orphans, all of whom were kept out of the clutches of the ambulance chasers and wolves by the United Mine Workers and their attorneys.

Yet, the Court says near the end of its opinion, in an attempt to distinguish the Button case, that

"However, the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot as such be equated with the *bodily injury* litigation with which we are concerned here."

The right of the coal miners in Illinois to concerted action to protect themselves and their families from the ravages of death and disability in their work means more than mere "bodily injury litigation" which might mean a bruised thumb or a sprained ankle.

It is hoped by many good lawyers, more interested in the public image of the courts and the bar than in collection of fees from disabled miners and their widows and orphans, that by re-hearing or otherwise, that unfortunate and ill-considered expression may not be allowed to become a part of the permanent record of the Court.

In view of the fact that the Court has overlooked the matters hereinabove pointed out, we urge a re-hearing should be granted and that on such re-hearing the decree of the Circuit Court should be reversed.

APPENDIX B

CONSTITUTION OF THE UNITED STATES

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LABOR MANAGEMENT RELATIONS ACT, 1947:

Section 7 (29 USC 157) *Right of employees as to organization, collective bargaining, etc.*

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and

to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title.

Canons of Ethics of the Illinois State Bar Association

“(35) Intermediaries. The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer’s responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer’s relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

“A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs. . . .

“(47) Aiding the Unauthorized Practice of Law. No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.”

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1966

NO. 884

UNITED MINE WORKERS OF AMERICA, DISTRICT 12
Petitioner

v.

ILLINOIS STATE BAR ASSOCIATION, ET AL.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF ILLINOIS**

**MOTION FOR LEAVE TO FILE A BRIEF AS
AMICUS CURIAE**

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) hereby respectfully moves for leave to file a brief *amicus curiae* in the instant case in support of the petition for a writ of certiorari, as provided for in Rule 42 of the Rules of this Court. The consent of counsel for the petitioner has been obtained. Counsel for respondent has refused his consent.

INTEREST OF THE AFL-CIO

The AFL-CIO is a federation of one hundred twenty-nine affiliated labor organizations with a total membership of approximately thirteen million five hundred thousand. The question presented by the instant case is whether union members may further their undoubted constitutional right to associate for the purpose of preserving and enforcing their legal rights, *Brotherhood of Railroad Trainmen v*

Virginia, 377 U. S. 1 (1964), by voting to set up a plan whereby a portion of their union dues is earmarked to pay an attorney to advise and represent such of their number as need his services. As this case and the *Trainmen's Case* both indicate union members, affiliated with every segment of the labor movement, have traditionally been anxious to utilize their labor organizations as a base upon which to build improved methods of obtaining legal services, see, e.g., "Committee Report on Group Legal Services" 39 Cal. S.B.J. 639, 670-675 (1965) (survey of union legal assistance plans in California); N. Y. Times, April 10, 1965, p. 31, col. 2 (discussion of legal aid clinic established by the New York Hotel Trades Council). Moreover, as both these cases also indicate these efforts have met widespread resistance from both the American Bar Association and State Bar Associations, see the Petition for Rehearing in the *Trainmen's Case* filed by the ABA and 44 State Bar Associations. The Bar's efforts have naturally tended to limit the effectiveness and the growth of these union group legal service programs.

The AFL-CIO, as spokesman for the majority of American union members has a profound interest in seeing that the arbitrary and unwise restriction on the access of working men to effective counsel sought by the Bar and granted by the Illinois courts is set aside. For this reason it seeks leave to file a brief *amicus curiae* in order to acquaint the Court with the views of the labor movement as a whole as to why the petition for a writ of certiorari should be granted.

ISSUE NOT COVERED IN THE PETITION

The main portion of the petition filed in the instant case is devoted to demonstrating that the Illinois Supreme

Court's determination of the constitutional question presented is erroneous and in conflict with this Court's decisions in the *Trainmen's Case*, *supra*, 377 U.S. 1 and *N.A.A.C.P. v Button*, 371 U.S. 415 (1963) (Pet. 14-25). It mentions only in passing (Pet. 21-22) the serious consequences that the decision below will have on workers' ability to secure truly adequate legal representation. We believe that recent legal and sociological commentary demonstrates beyond any reasonable doubt that the decision below will have an extremely deleterious effect on their ability to do so, and that it will be helpful to the Court to have the reasons for this belief developed. The accompanying brief is therefore addressed to that task.

CONCLUSION

For the above stated reasons we respectfully urge the Court to grant this motion for leave to file the accompanying brief *amicus curiae* in the instant case in support of the petition for a writ of certiorari to the Supreme Court of the State of Illinois.

Respectfully submitted,

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December 1966

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1966

NO. 884

UNITED MINE WORKERS OF AMERICA, DISTRICT 12
Petitioner

v.

ILLINOIS STATE BAR ASSOCIATION, ET AL.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF ILLINOIS**

**BRIEF FOR THE
AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
AS AMICUS CURIAE**

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), contingent upon the Court's granting the foregoing motion for leave to file a brief as *amicus curiae*.

The opinion below, jurisdiction, questions presented, the constitutional and statutory provisions and canons of ethics involved are set out on pages 3-4, 20a-21a of the petition.

The interest of the AFL-CIO is set out on pp. iii-iv of the foregoing motion for leave to file a brief as *amicus curiae*.

REASONS FOR GRANTING THE WRIT

In essence the position of the AFL-CIO is that group legal service plans¹ set up by non-profit associations, which incorporate an insurance or cost-spreading principle are the only presently available feasible means of providing the average working man with the effective legal assistance he needs and that these plans present no inherent policy problems which make their operation contrary to the public interest.

1. It is now beyond dispute, by reason of the work of distinguished scholars over the past thirty years: first that in our rapidly changing complex, interdependent urban society working men and their families are encountering an ever wider variety of problems which the general polity has dealt with through formal regulation and which may therefore appropriately be denominated as "legal problems"; and second that because of the present structure of the American Bar, as governed by the prevailing canons and rules, in many cases the average worker is not being appraised of his legal rights in such fields as landlord and tenant, consumer credit and family law, and is not being afforded an adequate opportunity to secure the services of a lawyer in whom he has confidence and who is competent to meet his particular needs at a price he can afford to pay.

¹ Group legal service plans have been defined as plans in which "Legal services [are] performed by an attorney for a group of individuals who have a common problem or problems, or who have joined together as a means of best bargaining for a predetermined position, or who have voluntarily formed, or become members of an association with the aim that such association shall perform a service to its members in a particular field or activity, or through common interests it appears that the organization can gain a benefit to the members as a whole." *"Committee Report on Group Legal Services,"* 39 Cal. S.B.J. 639, 661, (1964).

See, e.g. M. Schwartz, "Foreword: Group Legal Services in Perspective," 12 U.C.L.A. L. Rev. 279, 286-295 (1965); J. Carlin and J. Howard, "Legal Representation and Class Justice," 12 U.C.L.A. L. Rev. 381, 386-423, (1965) (collecting and analyzing earlier authorities); "Committee Report on Group Legal Services," *supra*, 39 Cal. S. B.J. at 652-660 (collecting and analyzing earlier authorities); E. Cheatham, "A Lawyer When Needed: Legal Services for the Middle Classes," 63 Col. L. Rev. 973 (1963); E. Koos, "The Family and the Law," (1949); Iowa State Bar Association, "Lay Opinion of Iowa Lawyers" (1949); C. Clark and E. Corstvet, "The Lawyer and the Public: An A. A. L. S. Survey," 47 Yale L.J. 1272 (1938); K. Llewellyn, "The Bar's Troubles, and Poultices—And Cures?," 5 Law and Contemp. Prob. 104 (1938). As the "Committee Report on Group Legal Services," *supra*, 39 Cal S. B.J. at 652, 659 stated, after analyzing the relevant data:

"We are persuaded that there is an unfilled public need for legal services; that the public from time to time is confronted with problems for which legal assistance would be on any standard highly desirable but where legal assistance is not obtained."

"Three indices tend to confirm that the public is not presently being adequately serviced by the legal profession. The growth of unauthorized practice (lay competition) has been a response to a growing need for legal assistance; a need not being met by lawyers. Specialization has been mentioned as a partial remedy but, . . . the bar has been reluctant to accept the stringent safeguards in a certification system that must be innovated in order to make specialization an effective device. Prior surveys of the public have reported a substantial need for legal services."

2. Equally important, as far as the problem presented here is concerned, there is growing evidence that well-to-do individuals, and institutions such as the government and corporations, receive a qualitatively different kind of legal

service than the average working man. Messrs. Carlin and Howard of the Center for the Study of Law and Society of the University of California, Berkeley, state:

"Lawyers representing lower-class persons tend to be the least competent members of the bar, and those least likely to employ a high level or wide range of technical skills."

"In the highly stratified professional community of the metropolitan bar, for example, the large firms serving wealthy individuals and large corporations claim a lion's share of the best legal talent. . . ."

"Lawyers available to lower-class clients are not only less competent, but whatever legal talents they have are less likely to be employed in handling matters for their poorer clients. In part this is a direct consequence of the fee. Thus, Hubert O'Gorman [*Lawyers and Matrimonial Cases* 61 (1963)] reports that among matrimonial lawyers in New York City (practically all of whom are individual practitioners or in small firms) the size of the fee has considerable impact on the quality of service provided. Not only is the amount of time spent on legal research 'conditioned by the anticipated compensation,' but fees may also 'dictate the strategy and tactics employed in legal representation.'"

"The quality of service rendered poorer clients is also affected by the non-repeating character of the matters they typically bring to lawyers (such as divorce, criminal, personal injury): this combined with the small fees encourages a mass processing of cases. . . . Moreover, there is ordinarily no desire to go much beyond the case as the client presents it, and such cases are only accepted when there is a clear-cut cause of action. . . ."

"A final significant fact about quality of representation is that lower-class clients are most likely to be provided with remedial service only. If a poor person gets to a lawyer it is generally after the fact—after he has been arrested, after his wages have been garnished, or after his property has been repossessed."

"... In [contrast in] representing [well-to-do] clients lawyers provide a much wider range of services and they are of a more continuous and preventive nature. Such services include: (1) planning and setting up legal arrangements by establishing contractual relationships to effectuate the client's wishes and to insure certain legal advantages, and (2) clarifying and fashioning the law to provide maximum protection of the client's interests by means of lobbying in legislative and administrative agencies, and by presenting carefully worked out legal arguments before various official bodies, including appellate tribunals." Carlin and Howard, *supra*, 12 U.C.L.A. L. Rev. at 384-385 (footnotes omitted.)

3. The scholars who have studied the problem are in general agreement as to the causes of the comparatively inadequate representation available to the typical working man. See authorities cited on p 3, *supra*. These causes have been succinctly summarized by the former Solicitor General, Professor Archibald Cox:

"... [T]he unfilled need for legal services would seem to center about two difficulties which it may be impossible to overcome without changes in the organization, or structure, of the legal profession and, incidentally, in some of the canons of ethics.

"The first difficulty is the inability of individuals to meet the high cost of the legal services that they occasionally require. It is not that fees are too high. Rendering skilled advice requires time and training that deserve adequate compensation. The cost of maintaining law offices is constantly rising. Litigation, especially where investigatory work is necessary, is expensive at best. Paying even modest legal fees puts an almost unbearable burden not only upon the poverty-stricken who obviously cannot bear the cost but also upon millions in low and middle income groups, unless the case happens to be one in which the potential recovery is large enough to merit a contingent fee. With the low and middle income groups the financial problem is not much different from that of hospital or surgical costs, which overwhelmed family after family

before the days of group insurance; the need arises suddenly, the cost is disproportionate to income and no savings have been accumulated against the contingency. This economic segment of society taken as a class, however, can afford to, and should therefore, pay for legal services if some way can be found of spreading and sharing the costs. Indeed, the devising of acceptable methods would seem to offer many advantages for the profession.

"Second, and possibly more important, is the problem of ignorance. The ignorance is of two kinds; first, ignorance of the possibility that legal advice might be helpful and legal remedies may be available; second, distrust of strange lawyers and ignorance as to whether and where reliable legal services can be obtained either without cost or within the limited ability to pay. . . ." A. Cox, "*Poverty and the Legal Profession*," 54 Ill. B.J. 12, 14-15 (1965).

4. There is a growing consensus that group legal service plans tend to remove the barriers to adequate legal representation noted by Professor Cox. As Professor Murray A. Schwartz, of the U.C.L.A. Law School, and a member of the Group Legal Services Committee of the California State Bar, has noted:

"These group plans tend to perform at least one of three separate functions which can be characterized as public awareness, contacting and economic.

"The *public awareness* function is the utilization of the group to apprise the members of their legal rights and of the general availability of lawyers to vindicate those rights. . . ."

"The *contacting* function is the bringing together of the client and a particular lawyer. . . ."

"The *economic* function relates to the pricing of legal services. A group may affect the price of legal services which any one client pays in two ways. The first is by adoption of an insurance principle, spreading the cost over a large number of potential clients (i.e. the members of the group,) so that the financial burden of the

individual legal service which might otherwise fall on one member is borne by all. All members of the group who are equally likely to be subject to the cost, but those who do not happen to be will, nonetheless, share it. The second way is by increasing the volume of particular kinds of legal services so as to render the handling of any one instance more efficient and thus less costly." Schwartz, *supra*, 12 U.C.L.A. L. Rev. at 285-286.

5. It appears absolutely clear to us that the points made thus far demonstrate that the Illinois courts' prohibition (Pet. 5a-10a) of financial arrangements, embodying an insurance or cost-spreading principle, between an attorney and a group which has formed a non-profit association, such as a labor union, seriously undermines the efforts of working men to provide themselves with effective legal assistance. First, it destroys at least half and probably more of the economic advantages of such plans by requiring each individual to meet the financial difficulties caused by a pressing legal problem entirely on his own, *see* pp. 5-7 *supra*. Moreover, it makes it extremely unlikely that the members of the group will benefit from the preventive legal planning and long range attempts to influence the course of the law that both well-to-do individuals and institutions presently receive by being in the position to retain an attorney, who they know has specialized competence in their area of interest, to look after their affairs, *see* pp. 4-5 *supra*. The extent of the social benefits lost should not be underestimated.

For as Professor Cox has noted:

"... [L]egislatures have passed a maze of measures and the courts have liberalized judge-made rules for the protection of the weak against over-reaching or oppression. Those laws are of little value, however, if the intended beneficiaries are too ignorant to be aware of their rights or too poor to retain an attorney to enforce them." Cox, *supra*, 54 Ill. B.J. at 14.

It is also clear that there is no presently operative alter-

native means available to fill the gap created by the Illinois courts' ruling. The alternative most often mentioned by the Bar is the Lawyer Referral Service, see the Petition for Rehearing, pp. 6-7, 10, filed by the ABA in *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1 (1964), but this program does not even purport to make available an insurance or cost-spreading principle. Moreover the limitations of this service are suggested by the 1962 data as to the Bar's support of the plan, which indicates that only 16,000 of the 300,000 practicing lawyers in the country participated, Schwartz, *supra*, 12 U.C.L.A. L. Rev. at 288, and the evidence which indicates that potential clients prefer the recommendations of organized groups to which they belong rather than relying on chance or the assistance of third parties with whom they are not familiar, "Committee Report on Group Legal Services," *supra*, 39 Cal. S.B.J. at 665, 672. The other logical alternative is prepaid legal insurance open to anyone qualified to buy a policy. The difficulty with this alternative is succinctly noted by the "Committee Report on Group Legal Services," *supra*, 39 Cal. S.B.J. at 720:

"... [T]hree articles are about the only written expressions in the area of prepaid legal insurance. Each article stresses how little is known of the need for such insurance. A corollary problem also exists; how much of a premium could be charged? It can not be so high as to be prohibitive but, conversely, it must be actuarially sound so as to enable the promoters of any such plan to remain solvent.

"This Committee has actively debated and considered the subject of prepaid legal insurance. Actuarial studies are badly needed if any such insurance plans can be successful. Through its secretary and members, this Committee has corresponded with and spoken to many experts in the insurance and actuarial fields.

"The response of those in the insurance field was uniform; it was decidedly unenthusiastic. No insurance

company has been found which was interested in either the development or sale of such a plan."

In short the situation is this—if the decision of the court below stands, truly effective legal services to meet the complex and growing legal needs of the average worker will continue to be largely unavailable.

6. The Illinois courts concluded that the advantages of group legal service plans which incorporate an insurance or cost-spreading principle were outweighed by what they perceived to be a possible threat to the attorney-client relationship brought about by conflicts between the individual member's interest and that of the group (Pet. 9a-10a). With all due respect, we submit that the courts below gave undue weight to this possibility.

First, it seems extremely unlikely that there is any appreciable danger that an attorney employed by a non-profit association will attempt to sacrifice the interest of a voting member of the group to further that of the association. For the members of the group will continue to assess themselves to pay his fee only if they are convinced that the attorney they employ has their individual interests at heart and that they will be well served by the plan when they make use of it. It is unlikely that they would vote to continue it if they had reason to believe that the personal interests of the individuals who support the plan including themselves were being submerged. For this reason it has been widely recognized by commentators that the fears of the Illinois courts are unwarranted, e.g., H. Weihofer, "Practice of Law by Non-Pecuniary Corporations: A Social Utility," 2 U. Chi. L. Rev. 119 (1934); "Practice of Law by Lay Organizations Providing the Services of Attorneys" 72 Harv. L. Rev. 1334, 1344 (1959); "Group Legal Services," 79 Harv. L. Rev. 416, 420 (1965). Indeed the very fact that the decision below excepted legal aid to the in-

digent from the sweep of its prohibition (Pet. 9a-10a) indicates that it fell into error by concluding that personal payment of the attorney's fee is the *sine qua non* of a properly functioning attorney-client relationship.

Second, the courts below failed to recognize that there are regulatory devices compatible with group legal service plans which could be employed to guarantee that the attorney-client relationship is not destroyed by group payment of the attorney's fee. For example, it might well be permissible for a State to require that group plans contain an explicit statement such as the one contained in the plan here that the attorney's "obligations and relations will be to and with only the several persons he represents." (Pet. 7) and to take steps to insure that this undertaking is observed.

Finally, the reasoning of the decision below is flatly inconsistent with that of this Court's decision in *Brotherhood of Railroad Trainmen v. Virginia* 377 U.S. 1 (1964) for we can conceive of no logical train of thought to support the conclusion that the Mine Workers Plan gives group interest greater scope to prevail over individual interests than does the Trainmen's plan. Thus the Illinois courts failed to give proper weight to the fact that this Court had already weighed the factor of possible conflicts between the individual and the group and found it insufficient to overcome the constitutional right of workers "to associate together to help one another to preserve and enforce [their] rights . . ." *Trainmen's Case, supra*, 377 U.S. at 8, see also *N.A.A.C.P. v. Button* 371 U.S. 415 (1963).

CONCLUSION

For the foregoing reasons, as well as those stated in the

petition, the petition for a writ of certiorari should be granted

Respectfully submitted,

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December 1966

No. 884.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioner,

v.

ILLINOIS STATE BAR ASSOCIATION et al.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court
of the State of Illinois.

**OBJECTION TO MOTION OF AMERICAN FEDER-
ATION OF LABOR AND CONGRESS OF INDUS-
TRIAL ORGANIZATIONS FOR LEAVE TO FILE
BRIEF AS AMICUS CURIAE.**

The Illinois State Bar Association and the individual Respondents, all members of the State Bar's Committee on the Unauthorized Practice of Law hereby respectfully object to the motion of the American Federation of Labor and Congress of Industrial Organizations, hereinafter called AFL-CIO, for leave to file a brief amicus curiae in

the instant case. Consent to file an *amicus* brief was refused by counsel for respondents. This action of refusal was not capriciously taken by respondents.

REASONS FOR OBJECTION TO MOTION.

1. The AFL-CIO clearly demonstrates in its motion that it seeks leave to participate as a **party** to the action. Its discourse under the heading "Interest of the AFL-CIO, on pages iii and iv of its motion, points out that it considers itself in that category.

" 'An *amicus curiae* is not a party to the action, but is merely a friend of the court whose **sole** function is to advise, or make suggestions to the court.' **Clark v. Sandusky**, 205 F. 2d 915; **Klein v. Less**, 43 A. 2d 755.

As ably stated by Mr. Justice Shaw in his additional opinion filed in the case of **Froehler v. No. American Life Insurance Co.**, 374 Ill. 17 at 27:

"Any case decided by this court may vitally affect pending litigation or controversies between other parties, but this does not necessarily justify intervention. Intervention by counsel as a friend of the court is only justified when the intervenor can show to the court that to protect it in the consideration of the case, such aid seems necessary or advisable."

The AFL-CIO is endeavoring to thrust its influence or power as a representative of many union members upon the deliberation of this Court on a specific local problem related only to the United Mine Workers Union, District 12, and the claimed unauthorized practice of law by it in the State of Illinois, and fails in its motion to advise this court that any of its One Hundred Twenty Nine affiliates have similar legal arrangements.

2. Movant stresses that the "question presented by the instant case is whether union members may further their

undoubted constitutional right to associate for the purpose of preserving and enforcing their legal rights, by voting to set up a plan whereby a portion of their union dues is earmarked to pay an attorney to advise and represent such of their number as need his services" (pages iii and iv of motion).

To properly respond to this erroneous statement of the issue in this case, we must separate the above quotation into two parts:

"a) Whether union members may further their undoubted constitutional right to associate for the purpose of preserving and enforcing their legal rights;

b) by voting to set up a plan whereby a portion of their union dues is earmarked to pay an attorney to advise and represent such of their number as need his services."

In considering (a) above, we must look to the facts which gave rise to the initial suit for injunction. For a number of years United Mine Workers, District 12, has hired an Illinois attorney to handle Illinois Workmen's Compensation cases of its members on a salaried basis (R. 3, pp. 17-19). At the time of this litigation, one Stuart Traynor was hired in that capacity by the union (R. 3, pp. 18-19). He received for the period January through November of 1964, the sum of \$11,366.68 in salary, and \$1497.60 in expenses (R. 7, p. 44). His annual salary was \$12,400 plus expenses (R. 7, p. 44). During a period from October, 1963, to December, 1964, 637 claims filed before the Commission were concluded by payments totaling \$737,968.27 (R. 7, pp. 35-36). The representation of each Miner was extremely impersonal. He seldom saw his client until the day of the hearing (R. 7, p. 21). Others fill out the application for adjustment of claim (R. 7, p. 9) or the report to attorney on accidents (R. 7, pp. 12-15). This latter report contains no language of employment of Stuart Traynor as the injured man's attorney or authority

to file a claim (R. 3, p. 20; R. 7, p. 14). The claim is concluded either by agreed settlement procedures or by a hearing before an arbitrator on the Industrial Commission staff. The attorney never receives a fee from the injured worker and all settlement drafts from insurance companies go directly to the worker.

One can observe from a reading of the facts stated above that we are dealing in this case with a matter of concern to the State of Illinois only. Stuart Traynor is an Illinois attorney practicing before an Illinois tribunal, The Industrial Commission, created by The Illinois Legislature. As an attorney he is subject to the rules and regulations, as to the practice of the Illinois Supreme Court. His activity was brought to the attention of this State Court by this action. The conduct and activity of United Mine Workers of America, District 12, in the State of Illinois, was also reviewed and, relying upon previous decisions of its court and the Canons of Ethics, held that the Union's activity and its violation of **state protected rights** (not Federally protected rights, i. e., FELA), the Mine Workers, by this decision are not deprived of any rights to which they are constitutionally entitled. This may well be the argument between the two interested parties in this lawsuit, as to the particular facts of this case, but it is not a matter of universal concern to the movant or any of its affiliates because of its local intrastate character.

A further objection to this intervention as a "so-called" friend of the court is found in (b) above. Movant expresses concern for the plight of the union because the members' concerted activity was setting up a plan "whereby a portion of their union dues is earmarked to pay an attorney to advise and represent such of their member as need his services". This is not the facts of our case at all. If movant had read the record it would be clear that "no portion of dues is allocated to pay at-

torney's salary" (R. 3, p. 19) (emphasis supplied). This information was furnished by the union, under oath, in answer to interrogatories. Here, again, the actual facts do not support the AFL-CIO's cry of concern for the labor movement. It is apparent by this erroneous statement that counsel for movant has a misconception of the problem before the Court, and is endeavoring to read into it something that is not present in order to present his harangue in the brief filed with his motion. This is a bold attempt to confuse the court and should not be tolerated.

Finally, the AFL-CIO profess a profound interest in seeing that working men have access to effective counsel. From the record we observe that M. J. Hannegan from January, 1961 until his death, averaged \$1,400 per case recovery, whereas the last attorney, Stuart Traynor, averaged only \$1,150 per case (R. 7, pp. 35-36, 43). The Union's factual answers to interrogatories answers this argument with mathematical certainty. We find a loss of \$250 per case average. Is this the effective counsel arrangement the AFL-CIO believes is so sacred? The impersonal nature of this representation eloquently demonstrates the need for the action taken by the Bar Association and the decision reached by the Illinois Supreme Court. We will, of course, in our Brief in Opposition to the Petition for Writ of Certiorari, give greater attention to this and to the full intent and meaning of the **Illinois Brotherhood** case, 13 Ill. 2d 391. One cannot claim that the filing of 416 claims in one year and the processing to conclusion of 487 claims in that same period by a person on a salary of \$12,400 is going to assure the working man that (1) he is receiving effective representation; (2) he is receiving maximum on his claim, or (3) he will not be subverted to other interests during the processing of his matter. The presence of the individual attorney-client relationship is lacking and the public, in this instance—the mineworker, is being made a mere pawn in the greater scheme of "things within the labor movement;

3. Movant claims that the decision below has serious consequences upon workers' ability to secure "truly adequate legal representation", and advances that recent writings on group legal services prove this. Its discourse in its brief on this subject merely sets forth one side of a highly controversial and untried subject-matter. Much is made of the so-called California Plan which was rejected by the Board of Governor of the California Bar and has not received approval since its rejection. **Lawyers at the Crossroads; Unauthorized Practice News**, Vol. xxxii No. 2, Summer 1966. This discussion can hardly be said to aid, advise or even be suggestive to this court when the facts in our instant case belie "truly adequate legal representation" afforded to the Mine workers in Illinois.

CONCLUSION.

It is evident from the objections indicated herein that the motion filed by the AFL-CIO for leave to file a brief amicus curiae should not be granted. Respondents respectfully request the court to deny this motion and to consider this case as between the original interested parties, The Illinois State Bar Association and its Committee, and the United Mine Workers of America, District 12, upon the Petition for Brief in Opposition as are to be filed herein.

Respectfully submitted,

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Office-Supreme Court, U.S.
FILED

FEB 14 1967

No. ~~884~~ **33**

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966 **7**

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioner,

v.

ILLINOIS STATE BAR ASSOCIATION et al.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court
of the State of Illinois.

BRIEF OF RESPONDENTS IN OPPOSITION.

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On Petition for a Writ of Certiorari to the Supreme Court
of the State of Illinois.

BRIEF OF RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinion of the Illinois Supreme Court (Pet. A. pp. 2a-13a and R. pp. 9-18), is reported in 35 Ill. 2d 112, 219 N. E. 2d 503 (1966). No written opinion was rendered by the trial court.

**CONSTITUTIONAL, STATUTORY PROVISIONS, AND
CANONS OF ETHICS INVOLVED.**

Pertinent constitutional provisions involved consist of the First and Fourteenth Amendments to the Constitution of the United States (Pet. p. 20a); Canons of Ethics of the Illinois State Bar Association (Pet. p. 21a); Illinois Workmen's Compensation Act, Illinois Revised Statutes, 1959, Sec. 138.1-28; Sec. 138.16 (Res. A. p. 21), Sec. 138.19 (1) (2) (Res. A. p. 21-22).

STATEMENT.

The respondents, in general, accept the statement submitted by the Petitioners. However, certain omissions and misstatements appear which require clarification. The Petitioners omitted from their recitation (Pet. pp. 5-6) the fact that at the time the mineworkers' Motion for Summary Decree was before the trial court for decision, an earlier filed Motion for Summary Judgment by the Bar Association Respondents was also under consideration (R. 3 pp. 27-30). The court's order reflected a consideration of both motions and made findings of fact and conclusions of law favorable to the Bar Association Respondents (R. 3 pp. 30-32).

In Petitioner's discussion of the facts they failed to call to the court's attention all of the interrogatories and answers thereto, referring only to an isolated few (Pet. pp. 6-10). As in the Supreme Court of Illinois, because of the limited reference to some answers, it is hereby necessary to direct this court's attention to our additional abstract (R. 7 pp. 37-46). Also, the Respondent's reference to the deposition of Stuart Traynor is a small excerpt thereof (Pet. p. 7), whereas, the complete deposition appears in the additional abstract, which had to be filed in order to permit the Illinois Supreme Court to consider the appeal in its entirety (R. 7 pp. 1-36). A careful reading of both abstracts filed in the State Court would be most helpful to this Court in understanding all the facts of this case.

ARGUMENT.

I. The decision below is clearly correct.

It is basic to this court's consideration of the Petition that it review the long history of Illinois Supreme Court pronouncements as to what constitutes the unauthorized practice of law within the State of Illinois. The **Illinois Mineworkers Opinion** (Pet. A. pp. 5a-7a) and the appellee's brief (Supp. R. 2, pp. 19-25) fully develop the court-announced concept of unauthorized practice of law in Illinois by unincorporated associations. This problem is not new, nor is it prospective with the Illinois Court or the organized bar of the State of Illinois. The Committee on Unauthorized Practice of the State Bar for many years has considered these problems, including the salaried lawyer arrangement of the United Mine Workers, District 12, and has taken court action in stopping such practices (Supp. R. 2, pp. 19-25).

This question of representation of union members by preselected attorneys was not new to the Illinois Supreme Court when the mine workers suit was initiated. As far back as May 23, 1958, the Illinois Supreme Court handed down its opinion in the **Illinois Brotherhood** case, 13 Ill. 2d 391, 150 N. E. 2d 163, for the convenience of the Court reported in full in the appendix to this Brief (Res. A. pp. 13-20). While condemning the financial pay-back by the attorney to the union out of fees collected, that court readily recognized the right of the union to recommend to its members generally, and, to injured members or their survivors, in particular, **first**: the advisability of obtaining legal advice before making a settlement; and **second**: the names of attorneys who, in its opinion, have the capacity to handle such claims successfully (Res. A. p. 19).

Immediately following this pronouncement by our court, the Illinois State Bar Association Unauthorized Practice of Law Committee, in meetings held with the mineworkers representatives, urged that union to desist from its salaried lawyer arrangement and follow the guidelines of recommendation of legal counsel approved by the Illinois Court in its **Brotherhood** case. In 1964, after all reasonable efforts failed, the Bar Association, acting through its committee, with reluctance initiated the present litigation. Throughout the course of the litigation, at every appearance before the judges of the Circuit Court of Sangamon County, and, even before the Supreme Court, in our brief (Supp. R. 2, p. 14) as well as in oral argument, this Bar Association, through its counsel, offered to dismiss the suit if the salaried lawyer arrangements were abandoned and a proper recommendation plan substituted. This the union was unwilling to do.

We, too, are interested in seeing that union members obtain "competent and loyal legal counsel" (Pet. p. 14) but we are not convinced that the plan now in effect accomplishes such purpose. On the contrary, the record herein belies such claim. It is axiomatic that not all claims or suits brought before administrative tribunals or courts are correctly decided at the lowest level. For this reason, appellate procedures are an inherent part of our judicial system. The rulings of the Industrial Commission are subject to review in the Circuit Courts of this State, and, from there, to our Supreme Court (Ill. Rev. Stat. 1959, Ch. 48, Sec. 138.19 (1) (2)). The fundamental duty of an attorney involves undiluted loyalty to the client whom he serves and whose interest he protects (Pet. A. 9a, R. p. 14). It follows, without question, that this duty extends to the maximum representation of his individual client's interest. An analysis of the Workmen's Compensation cases which reached the Supreme Court of the State of Illinois for a thirty-year period (1937-1966)

contained in volumes published by the official Reporter, discloses that 332 cases were decided by it. Of this total, 226 thereof were appeals initiated by employers, 84 were pursued by employees. In that number only 11 cases were appealed by the coal mining companies and 10 by the miner. Of this group of 21 cases, only 5 originated involving United Mine Workers, District 12, three of those appeals were filed by the coal mining companies and only two by miners affiliated with the Petitioners herein. It is further significant that the last appeal by a mineworker was in 1948. During the above referred to thirty-year period, the rates of recovery for specific injury were increased several times by statute, the last time being in 1963, before this litigation commenced. Yet the salaried lawyer in the calendar year 1964 recovered less on the average than his predecessor even though he was practicing before the commission when the rates were at a higher level. (R. 7, pp. 35, 36, 43). In the years 1964-66, during the pendency of this litigation, we find there was a substantial increase of appeals to the Supreme Court originating in this Administrative Agency due to the adoption of Illinois' New Judicial Article on January 1, 1964, which simplified and made more expeditious appellate procedures. Eighty (80) cases were taken by appeal to that court, of which sixty-four (64) were advanced by the Employer and sixteen (16) by the employee. Not a single case involving a United Mine Workers, District 12 member, either as petitioner or respondent, reached our highest court in that period. Is this evidence of "competent and loyal legal counsel" so vital to the individual interest of the miner? We cannot believe that this salaried lawyer arrangement has fully advanced legitimate legal claims of the mineworker. On the contrary, when considered with the volume of cases handled by this salaried attorney per year. (R. 7, p. 36) we cannot help but feel that, in the interest of expediting his work load, he most likely has dealt with the coal mining com-

pany's lawyers on a claim volume basis (sometimes called "wholesaling files"), and it would seem a logical conclusion that the individual mineworker's injury claim has been compromised at a figure far below what might have been secured if the mining company lawyer was dealing with independent attorneys.

In Illinois, many attorneys are highly competent and successful practitioners before the Industrial Commission of the State of Illinois. There is absolutely no shortage of lawyers who are willing, ready and able to handle Workmen's Compensation cases of the union members. It is **highly significant** that nowhere in this record is there a word of testimony, nor a single affidavit filed by the petitioners that any member of the union, for any reason whatsoever, was unable to find competent, individual attorneys to handle their claims. If such fact were true, most certainly the petitioners would have filled the trial court record with proof thereof, by depositions, or affidavits to this effect, before asking for a summary decree. Only if such circumstances existed in Illinois could our factual situation be considered to parallel the **Button** (371 U. S. 415) case. Without it, their hue and cry of precedence vanishes.

The Workmen's Compensation Act, contrary to the inference fostered by Petitioners, does provide for the awarding of attorney's fees (Ill. Rev. Stats. 1959, Ch. 48, Sec. 16, Res. A. p. 21). All attorney's fees are fixed by the Industrial Commission and are carefully and judiciously controlled. It is common knowledge that the maximum fee which is ever allowed is 20%. However, the Commission rarely approves fees of that size and most fees awarded are substantially less. It should also be brought to your attention that the maximum fee permitted in a death case is 10%. It is apparent, therefor, that petitioners isolated reference to a section of the Act dealing with

liens, attachment or garnishment (Pet. p. 23), cannot be read to contain a prohibition of attorney's fees for professional services rendered.

II. The Illinois Supreme Court decision does not in any way deny the petitioners any constitutionally protected right nor does the State decision conflict with any decision of this court.

When we filed the present suit against the mineworkers in June of 1964, your Court had already handed down the decision in the **Button** (371 U. S. 415, Jan. 14, 1963) case and the **Virginia Brotherhood** (377 U. S. 1, April 20, 1964) case. As lawyers, it behooved us to give careful consideration to the intent and meaning of these decisions because of their possible effect on our present lawsuit. A searching analysis of these cases, while comparing them with the factual situation involving the mineworkers in Illinois, and its purely intrastate character, convinced us, as attorneys, that our present litigation was in no way comparable to these decided matters. On the contrary, upon reviewing these two opinions with our own **Illinois Brotherhood** case, the Bar Association's course of action was considered proper and was warranted. As attorneys, it would be foolhardy and presumptuous on our part to arbitrarily disregard the pronouncement of the highest court of the land for the sole and only purpose of harassing a union. It cannot be considered harassment, when you plead with them to adopt a course of conduct approved by the highest court in the land in the **Virginia Brotherhood** (377 U. S. 1) case.

The prime concern of the Bar Association and its Unauthorized Practice of Law Committee is the **protection of the public**. In this instance, the **public** is the **individual mineworker**, and he does not lose that status merely because he is a member of a large union. The protection

of the public and the assurance of the proper attorney-client relationship is the sole and only purpose for the existence of a state Unauthorized Practice of Law Committee.

Our Illinois Supreme Court carefully considered the effect and the meaning of the pronouncements of your court in the **Button** (371 U. S. 415), and **Virginia Brotherhood** (377 U. S. 1) cases, before reaching its decision as is apparent from the scholarly opinion handed down (Pet. A. pp. 2a-13a).

With respect to the **Virginia Brotherhood** (377 U. S. 1) case, the Illinois Supreme Court analyzed it and found that it did not overturn their prior decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims (Pet. A. 11a).

Similarly, the Illinois Court considered the **Button** (371 U. S. 415) case, and rightfully concluded that this litigation involved a form of constitutionally protected political expression which cannot be equated with the bodily injury litigation with which we are concerned in this present litigation (Pet. A. 11a).

The Illinois Court then rightfully concluded that the decision entered by the Circuit Court of Sangamon County was not violative of the First Amendment guarantees relating to freedom of association and expression. This State Court decision referred to the recognition in both **Button** (371 U. S. 438-40), and **Virginia Brotherhood** (377 U. S. 8, 10) cases, of the right of individual states to regulate the practice of law and those who unauthorizingly practice it (Pet. A. p. 12a).

The mineworkers throughout the entire course of this litigation have endeavored to place unwarranted significance upon very general statutory language contained in

Section 157 of the Labor Management Act (29 USCA, 157). At most they have only been able to refer to this language as if it had some magic significance. Although this statutory provision has been in effect since 1935, nowhere do we find, in federal case law, a determination that the phrase, so emphasized, embraces the relationship between a union and, a salaried attorney representing individual members.

Without attempting to be unduly critical of the reasoning found in the petitioner's brief, we feel constrained to quote in its entirety the paragraph of American Bar Association Professional Ethics Committee Opinion 295 from which the petitioners have abstracted a quotation which appears to be a profound utterance (Pet. p. 24). This paragraph reads as follows:

"The Canons of Professional Ethics must be adaptable to times in which we live and our committee's interpretations must recognize modern methods and procedures. If, as has been stated many times, we must balance the public interest against the incidental publicity accorded the individual lawyer, we find that the listing of home telephone numbers of lawyers who practice in the classified area is consistent with the professional dignity and good taste. It is our opinion, however, that the home number of any member of the firm should appear under his individual alphabetical listing instead of under the firm name. As previously stated, we believe under the firm name, there should be no indication of what number to call on nights, Sundays and holidays."

It is absurd to equate telephone listings with salaried employment of lawyers.

We do not find any constitutional infringement of the rights of the Illinois Mineworkers in the action taken by the courts of Illinois to regulate and control the practice

of law within its border. The State of Illinois has a "compelling state interest" in controlling the standards of professional conduct. **N. A. A. C. P. v. Button**, 371 U. S. 415, at 438. The Illinois Supreme Court has carefully reviewed the problem of constitutional infringement and has justifiably rejected it. To have decided otherwise would have made a mockery of the power of the Illinois Supreme Court to control the practice of law in this State. Neither the Bar Association's Unauthorized Practice of Law Court nor the Supreme Court is attempting to regulate conduct involving application of a Federal Law, such as the Federal Employers' Liability Act or practice before the United States Patent Office (**Sperry v. State of Florida**, 373 U. S. 379), but the Illinois decision merely limited its curtailment of the Union's conduct to state protected rights only.

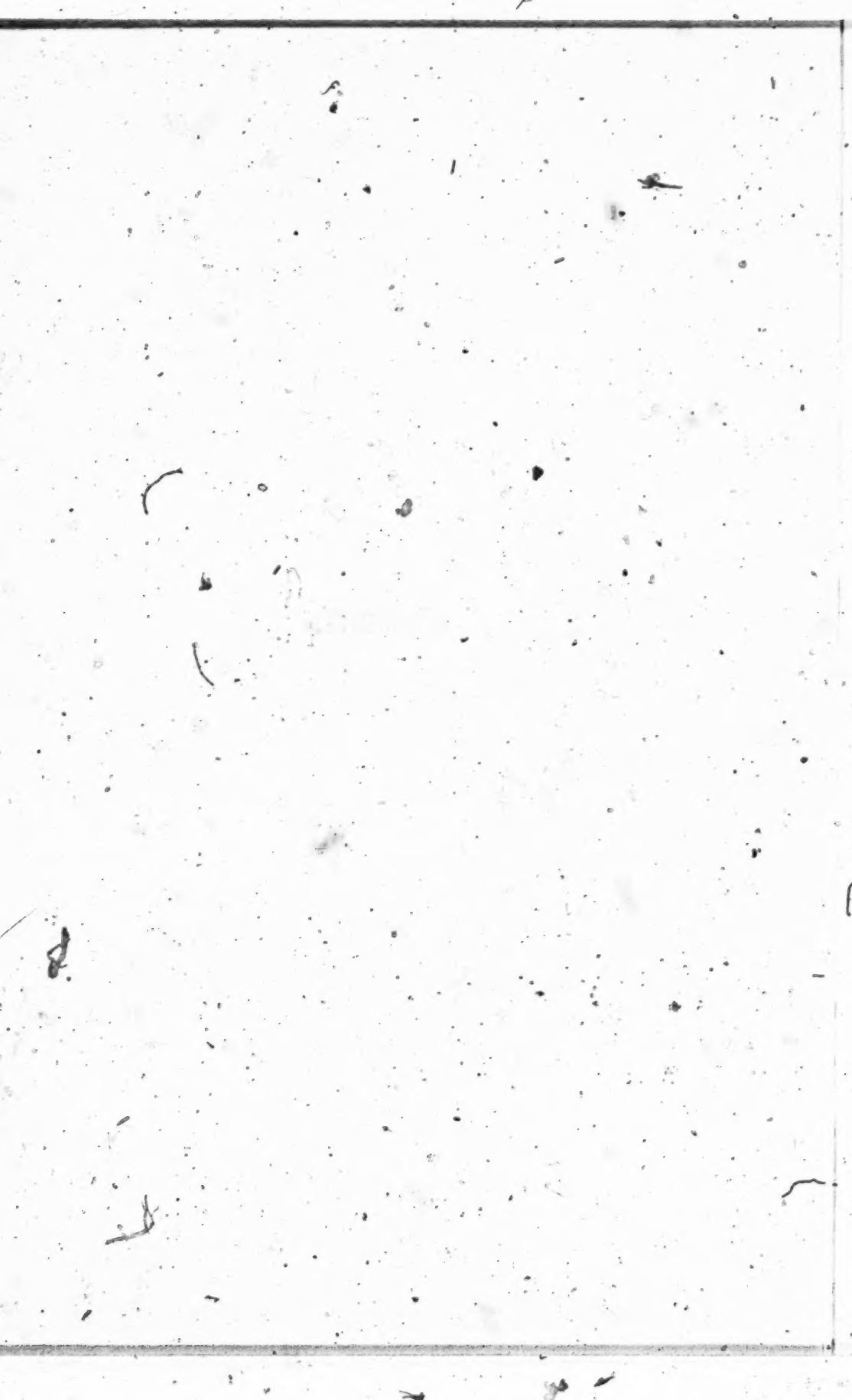
CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Counsel for Respondents.

APPENDIX.



APPENDIX A.

In re Brotherhood of Railroad Trainmen.

Opinion filed March 20, 1958—Rehearing denied
May 23, 1958.

PER CURIAM: A motion was made on behalf of the Brotherhood of Railroad Trainmen for leave to file in this court an original petition for a declaratory judgment. The motion and petition described certain conduct of the Brotherhood and the lawyers who serve as regional counsel for its legal aid department and requested a ruling that the conduct described was neither illegal nor unprofessional. The motion disclosed that disciplinary proceedings were pending against Edward B. Henslee, general counsel for the Brotherhood, and a regional counsel for its legal aid department, and three of his associates, Edward B. Henslee, Jr., Walter N. Murray and Frank H. Monek.

The questions raised by the petition had not heretofore been considered by the court. And because this court both formulates and enforces the standards governing the practice of law (*In re Application of Day*, 181 Ill. 73), we were of the opinion that before a ruling of any kind should be made, an investigation into the practices in question should be conducted. The motion for leave to file was therefore denied, but at the same time the court, on its own motion, appointed the Honorable Charles H. Thompson, a former justice of this court, as special commissioner, "with power to inquire into and take proof of all relevant factual matters and to report the testimony, together with the applicable principles of law, to the Chief Justice."

Thereafter hearings were conducted by the special commissioner. The Brotherhood of Railroad Trainmen, the Illinois State and Chicago Bar associations, and a group of twenty-seven railroad companies participated in the

hearings by their counsel. At the conclusion of the hearings briefs were filed on behalf of these parties and also on behalf of the American Bar Association. The special commissioner's report and the briefs are now before the court.

There is no serious dispute as to the basic facts. In 1930 the Brotherhood established its "Legal Aid Department." It took this step because it felt that under pressure from railroad claim agents, the claims of its members resulting from injuries they suffered in their work were being settled for unfair amounts. Some of the railroads forced settlements by the threat of loss of employment. At the same time, the members were being solicited by lawyers of varying degrees of competence who sought to, and did, handle the claims of members for contingent fees that sometimes ran as high as fifty per cent of the amount recovered.

As it presently operates, the legal aid department of the Brotherhood maintains a central office in Cleveland, Ohio, at the national headquarters of the Brotherhood. In that office it has a staff consisting of a chief clerk, a research analyst, three stenographers and a file clerk. It also has a number of regional investigators. The Cleveland office serves as a clearing house which receives reports from all Brotherhood Lodges of instances in which members have been injured or killed in railroad accidents. It notifies the appropriate regional investigator and regional counsel of all accidents.

Operating in conjunction with the legal aid department are sixteen lawyers, each designated by the Brotherhood as a regional counsel for the legal aid department. The regions tend to follow railroad system lines, rather than geographical lines. For example, Edward B. Henslee, the regional counsel with offices in Chicago, is assigned a region that includes all members employed by railroads in Ohio,

and the members employed by certain railroads in Pennsylvania, Michigan, Indiana and Illinois. The dominant considerations in the selection of regional counsel are the Brotherhood's confidence in the ability of the attorney, plus the prospect of high jury verdicts in the city where his office is located.

By agreement with the Brotherhood the attorneys who are designated as regional counsel charge a fee of twenty-five per cent of the amount recovered in each case, whether recovery is by settlement or by judgment. Regional counsel have also agreed to and do pay all court costs, investigation costs, costs of doctors' examinations, expert witness fees, transcript costs and the cost of printing briefs on appeal. They also pay the total cost of operating the legal aid department of the union. All expenses of the legal aid department are apportioned among the sixteen regional counsel in the ratio that their respective gross fees bear to the total gross recoveries throughout the country. Periodically throughout the year the legal aid department assesses each regional counsel for his proportionate share of the total cost, and at the end of each year each regional counsel is billed for the balance of his assessment. The Brotherhood maintains a practice of apportioning the very high expenses of its conventions among its various "departments" on the basis of the amount of time spent in discussing, on the floor of the convention, the affairs of that department. The legal aid department's share of this cost is assessed against and paid by the regional counsel.

The Brotherhood constitution requires that each local lodge appoint someone whose duty it is to fill out an accident report whenever a member is injured, and also to make contact with the injured man, or the relatives of a man who is killed, and make it known that legal advice will be given free of charge by the regional counsel. He

also makes known the availability of regional counsel to handle the claim and any ensuing litigation for a total charge of twenty-five per cent of the amount recovered by settlement or by litigation. The twenty-five per cent includes all expenses of investigation and litigation.

The lodge member who investigates the occurrence and makes contact with the injured man recommends and urges that regional counsel be consulted and employed. These men carry blank copies of contracts employing the regional counsel's firm as attorneys. The regional investigators employed by the legal aid department also carry these contracts. If a signed contract is not obtained by an investigator in the field, an investigator often brings the interested parties to the office of the regional counsel in Chicago. The injured man may be accompanied by his wife, and if the interested party is a widow, the wife of the investigator also makes the trip. The expenses of these trips are paid immediately by regional counsel. The lodge member who investigates and urges the employment of regional counsel is also compensated by regional counsel at his regular hourly wage rate for time spent in investigating the case and in making the trip to Chicago. These amounts are paid whether or not the regional counsel is retained, and regardless of the ultimate outcome. In addition, Mr. Henslee testified, "There are many times when one of the boys will bring in a case, and taking care of the investigation, etc., they are given a gratuity of \$100 or \$150."

The Brotherhood defends its practices on legal grounds, and also argues that they are justified by policy considerations. As a matter of law it argues that its method of handling the personal injury and death claims of its members is permissible because under the Railway Labor Act the Brotherhood is authorized to represent its members, before the National Railroad Adjustment Board or other

appropriate tribunals, in the processing of disputes growing out of grievances. (45 U. S. C. 152.) But these injury and death claims are not the kind of labor disputes that the statute contemplates. We find nothing to suggest that Congress intended by the Railway Labor Act, any more than by the Labor Management Relations Act (29 U. S. C. 141), to overthrow State regulation of the legal profession and the unauthorized practice of the law.

The Brotherhood also points to the fact that insurance companies are permitted to take over completely the defense of claims against their policy holders, and suggests that the interest of the members of the Brotherhood in legal developments in Federal Employers' Liability Act cases, and particularly in developments with respect to the amount of damages recoverable in those cases, is sufficiently intimate that it is warranted in taking an active role in the prosecution of these cases. The argument is unsound. The interest of the insurance company is of a different kind. The money involved is its money, and for that reason some States permit an action to be maintained directly against it. And the interest of the Brotherhood in the individual claims of its members does not authorize it to engage in the active solicitation of those claims for particular lawyers who finance the solicitation.

The policy argument that the Brotherhood makes, based upon facts that are peculiar to it and to its members, is more persuasive. Railroading is a hazardous business in the course of which many men are injured, and the injuries are frequently very serious. The members of the Brotherhood include switchmen, who perform the most hazardous part of railroad work. In the past the claim agents of some of the railroads have been aggressive in their efforts to settle the claims of injured trainmen for the smallest amounts possible regardless of fairness and adequacy. And while there is evidence that some rail-

roads are moving away from this policy, there is also evidence that undesirable practices persist. The Brotherhood insists that injured trainmen, and the representatives of deceased trainmen, who are unversed in the law, are entitled to procedures that will insure that they receive competent legal advice for reasonable fees. It points out that any advice or service rendered by the regional counsel relates only to matters arising out of personal injuries incurred during the course of employment.

While these considerations have weight, they are insufficient in our opinion to override the principles that must govern the members of the legal profession in their relations with clients. Several courts have considered, in varying contexts, the activities of the legal aid bureau and its regional counsel. (*Hildebrand v. State Bar of California*, 36 Cal. 2d 504, 225 P. 2d 508; *Atchison, Topeka & Santa Fe Railway Co. v. Jackson*, 235 F. 2d (C. C. 10) 390; *In re O'Neill*, 5 F. Supp. (D. C. E. D., N. Y.) 465; *Doughty v. Grills*, 37 Tenn. App. 63, 260 S. W. 2d 379; cf. *Ryan v. Pennsylvania Railroad Co.*, 268 Ill. App. 364.) With the exception of the *Ryan* case, all of them have expressed disapproval. The *Ryan* case was based primarily on the Appellate Court's appraisal of public policy. It did, however, approve practices of the Brotherhood which do not differ in substance from those here involved.

While this matter was pending the General Assembly enacted a statute that expressed a policy contrary to that stated in the *Ryan* case. It provided: "It shall be unlawful for any person not an attorney at law to solicit for money, fee, commission, or other remuneration directly or indirectly in any manner whatsoever, any demand or claim for personal injuries or for death for the purpose of having an action brought thereon, or for the purpose of settling the same." (Ill. Rev. Stat. 1957, chap. 13, par. 15.) As originally introduced the Bill contained the following

provision: "Nothing herein shall be construed to prevent any bona fide labor organization or any member thereof from securing advice for any member of such organization in regard to his rights except that only an attorney may give legal advice." This provision was stricken by amendment in the House, and an attempt to reinstate it was defeated in the Senate.

What has been said would ordinarily be sufficient. The Brotherhood, however, has frankly and openly placed its problem and its own solution of it before the court, and asked for guidance. We think, therefore, that it is appropriate to indicate in broad outline what the Brotherhood may do with respect to the injury and death claims of its members.

The objective of the Brotherhood in seeking to secure competent legal representation of its members can be accomplished without lowering the standards of the legal profession. The Brotherhood has a legitimate interest in investigating the circumstances under which one of its members has been injured. That interest antedates the occurrence of any particular injury. We are of the opinion that the Brotherhood may properly maintain a staff to investigate injuries to its members. It may so conduct those investigations that their results are of maximum value to its members in prosecuting their individual claims, and it may make the reports of those investigations available to the injured man or his survivors. Such investigations can be financed directly and without undue burden by the 218,000 members of the Brotherhood.

The Brotherhood may also make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal advice before making a settlement and second, the names of attorneys who, in its opinion, have the capacity to handle such claims successfully. Its employees, however, may not

carry contracts for the employment of any lawyer, or photostats of settlement checks. No financial connection of any kind between the Brotherhood and any lawyer is permissible. No lawyer can properly pay any amount whatsoever to the Brotherhood or any of its departments, officers or members as compensation, reimbursement of expenses or gratuity in connection with the procurement of a case. Nor can the Brotherhood fix the fees to be charged for services to its members. The relationship of the attorney to his client must remain an individual and a personal one.

The course thus outlined, if adopted, will make it possible for the Brotherhood to achieve its legitimate objectives without tearing down the standards of the legal profession. If in the future the claims of its injured members are solicited by lawyers, or if the fees charged by lawyers are excessive, the remedy of the Brotherhood will lie by way of complaint to the grievance committee of the appropriate bar association, rather than by way of a competing system of solicitation.

So far as the disciplinary aspects of the matter are concerned, we are of the opinion that because of the decision of the Appellate Court in *Ryan v. Pennsylvania Railroad Co.*, 268 Ill. App. 364, proceedings looking toward the imposition of discipline should not be pursued. (*In re Luster*, 12 Ill. 2d 25.) For the same reason we are of the opinion that time should be allowed the Brotherhood to reorganize its legal aid department along the lines outlined in this opinion. The standards here stated will therefore become effective on July 1, 1959.

APPENDIX B.

• Workmen's Compensation Act.

§ 138.16 Rules and Orders—Depositions—Subpoenas—Hospital Records—Court Reporter—Fees and Charges.

The Commission shall make and publish rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed prima facie reasonable and valid.

• • • • •

The Commission shall have the power to determine the reasonableness and fix the amount of any fee of compensation charged by any person, including attorneys, physicians, surgeons and hospitals, for any service performed in connection with this Act, or for which payment is to be made under this Act or rendered in securing any right under this Act. 1951, July 9, Laws 1951, p. 1060, § 16, as amended 1957, July 11, Laws 1957, p. 2610, § 1; 1959, July 21, Laws 1959, p. 1733, § 1.

138.19 Judicial Review—Certiorari—Scire Facias—Certification of Record by Commission—Cost of Record.

(1) Except in cases of claims against the State of Illinois, in which case the decision of the Commission shall not be subject to judicial review, the Circuit Court of the county where any of the parties defendant may be found, or if none of the parties defendant can be found in this State then the Circuit Court of the county where the accident occurred, shall by writ of certiorari to the Commission have power to review all questions of law and fact presented by such record.

• • • • •

Bond—Determination on Certiorari—Review by Supreme Court—Supersedeas and Stay—Majority Rule.

(2)

• • • • •

Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon the filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for the filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court.

• • • • •

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SUPREME COURT. U. S.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1967

No. 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,

Petitioner,

-v. 1-

ILLINOIS STATE BAR ASSOCIATION *et al.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*,
BRIEF *AMICUS CURIAE*, AND MOTION FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT OF THE NAACP
LEGAL DEFENSE AND EDUCATIONAL FUND, INC., AND
THE NATIONAL OFFICE FOR THE RIGHTS OF THE
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1967

No. 33.

UNITED MINE WORKERS, DISTRICT 12,

Petitioner,

—v.—

ILLINOIS STATE BAR ASSOCIATION, *et al.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Motion for Leave to File Brief *Amicus Curiae*

Movants NAACP Legal Defense and Educational Fund, Inc., and the National Office for the Rights of the Indigent, respectfully move the Court for permission to file the attached brief *amicus curiae* and assign the following reasons.

During the past thirty years, the legal profession has come to recognize that its goal of providing all Americans with adequate legal representation cannot be achieved through exclusive reliance upon the traditional attorney-client relationship. In some instances, clients in need of legal assistance are totally indigent, and cannot afford to hire a lawyer. In others, clients are indigent in the sense that they cannot possibly afford to pay the legal fees

charged in a complex case. In still other instances, clients who can afford counsel cannot find an attorney willing to handle their cases, because their causes are unpopular (as in civil rights litigation in the deep South).

The incorporation of petitioner Legal Defense Fund twenty-eight years ago was one of the earliest reactions to the newly recognized need for new forms of legal service. The Fund employs a staff of over twenty lawyers who represent Negroes all over the nation in cases involving equal opportunities in education, employment, housing, and economic security, as well as in criminal cases. Its salaried lawyers receive no fees from its clients; the Fund's budget is derived primarily from private donations.

Last year the Fund established as a separate corporation movant National Office for the Rights of the Indigent (NORI) as another response to the manifest need for legal services which cannot be satisfied by private practitioners alone. It too is an association employing salaried attorneys, and its income is provided initially by a grant from the Ford Foundation. NORI is cooperating with lawyers in both urban and rural areas to assist the poor in individual cases and at the same time to suggest to appellate courts the need for changes in legal doctrines which unjustly affect the poor. NORI is currently involved in cases concerning public welfare, urban renewal, public housing, garnishment rules, and consumer frauds. It works closely with attorneys in neighborhood legal offices established under the Economic Opportunity Act of 1964. These offices represent still another attempt to expand legal service so that everyone in need of counsel may have it.

Many of the experiments providing new forms of legal service described in Section II of the appended brief

(pp. 14-26) can be described as forms of "group legal service." Yet such services are often deemed unethical by state and local bar associations. The present case is a typical instance in which an attempt to provide a large number of persons with inexpensive legal assistance is being stifled by a state bar association. The legal doctrine announced by the Illinois Supreme Court, we submit (brief, pp. 26-34), threatens not only the effort of the Mine Workers Union to help solve some of the legal problems of its members, but jeopardizes, to a greater or lesser extent, all these experiments in group service. Our own operations, the neighborhood law office programs funded by the federal government, and of course the more classic forms of group legal service (such as that established by the Mine Workers)—all are threatened by this doctrine. And even were the Illinois Court's doctrine definitively restricted to the latter category of service, a major objective of the Legal Defense Fund and NORI—the extension of legal service to all Americans who need it—would be severely retarded. Reaching the objective of adequate legal services for all is an enormous undertaking requiring not one, or ten, but perhaps thousands of experiments in group legal services. To the extent doctrines which cripple this necessary experimentation are allowed to flourish, the Legal Defense Fund's and NORI's objectives are frustrated. Therefore, we respectfully submit that the views of movants may be of interest to the Court.

We have asked permission of the parties to file this brief *amicus curiae*; counsel for petitioner consented but counsel for respondents Illinois Bar Association *et al.* refused.

WHEREFORE movants pray that the attached brief *amicus curiae* be permitted to be filed with this Court.

Respectfully submitted,

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1967

No. 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,

Petitioner,

—v.—

ILLINOIS STATE BAR ASSOCIATION *et al.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF AMICUS CURIAE

Statement of the Case

For many years, the Mine Workers Union has employed a licensed attorney, who represents members and their dependents, if they so desire, in Workmen's Compensation cases. The attorney is paid \$12,400 per year by the Union, and receives no additional fees from the members he represents. Members are free to employ outside counsel if they prefer. Among the conditions of the attorney's employment by the Union is the stipulation that "you will receive no further instructions or directions and have no interference from the District [Local] nor from any officer,

and your obligations and relations will be to and with only the several persons you represent." The attorney seeks to achieve settlements fair and acceptable to the claimants; when he cannot reach such a settlement with the company, he represents his client before the Industrial Commission of Illinois. The worker receives the full amount of the settlement or award.

The Illinois State Bar Association alleged that this procedure constituted the unauthorized practice of law by the Union, and secured an injunction from the circuit court of Sangamon County restraining the Union's continued employment of the attorney to represent individual members. The Union unsuccessfully contended there and in the Illinois Supreme Court that its activities are constitutionally protected.

Summary of Argument

In recent years, it has become increasingly evident that most Americans are not receiving the legal services they vitally need. We have begun to recognize that just as all of us need routine medical care, legal assistance is also a routine need in a complex society. Persons in every bracket, from the very rich to the very poor, have this need, yet very few can afford the legal help they need, given the high demand for lawyers, the small supply, and the prevailing method of providing and paying for legal services (pp. 9-14).

Elements in the legal profession have responded to this challenge by devising many new forms of service. The new forms both lower the costs of service by incorporating economic efficiencies and spread the costs among members

of groups so that no staggering costs fall upon a single unfortunate individual. Today's experiments in providing legal service parallel recent changes in the provision of medical service. Among the types of programs that might be included in the term "group legal service" are club legal services, legal insurance, institutions providing legal service to further a public cause, legal services as fringe benefits of employment or union membership, and neighborhood law offices for the poor (pp. 14-26).

But some state and local bar associations, motivated perhaps by the unwarranted fear that new forms of service will bring about a reduction in the number and amount of lawyers' fees, have charged many of these experiments, both in and out of court, with the "unauthorized practice of law." They have succeeded in closing down many of the programs, and in deterring the establishment of others. Even some of the neighborhood legal offices founded by the Federal government have been attacked. Although only a few of these offices have actually been closed by these attacks, their functions have been effectively restricted by pressure from the bar. And although the Illinois Supreme Court's opinion places aid to indigents in a separate category from group services, we shall show that this distinction is unreasoned; it therefore has not protected, and cannot protect, such assistance from attack (pp. 26-34).

The attacks on most of these new experiments should not succeed, because services like that provided members of the Mine Workers Union are constitutionally protected. There is a constitutional right to associate to give and receive legal services. In addition, state-imposed restrictions on the practice of law, in the absence of harm

or the real threat of harm, violate due process. States may enforce canons of legal ethics narrowly focused upon specific real dangers, but may not, as below, employ broad and vaguely stated proscriptions, based on remote hypotheses of harm, to restrict the ways in which lawyers may meet the public's legal needs (pp. 35-45).

ARGUMENT

Introduction

The essential feature of the Illinois Supreme Court's opinion is its theory that, except in the case of legal services to indigents,¹ the unauthorized practice of law is committed whenever the full burden of paying for legal services does not fall squarely upon the client aided.² This theory is based upon faulty reasoning and fails to take proper account of the constitutional principles announced in *NAACP v. Button*, 371 U. S. 415 (1963) and *Brotherhood of Railroad Trainmen v. Virginia State Bar*, 377 U. S. 1 (1964). Unless disapproved in the clearest terms, it could help suppress the robust development of legal services now taking place in the United States, a development offering, for the first time in our history, the possibility of adequate legal representation for all persons—regardless of economic condition. This brief will survey the dimensions of this revolution, will show how the rigid and unthinking

¹ The court's exception of aid to indigents is unreasoned. As will be shown, the court's reasoning could be used to attack legal programs aiding the poor, and in a number of states this has already happened. See pp. 27-33, *infra*.

² *United Mine Workers, District 12 v. Illinois State Bar Association*, 35 Ill. 2d 112, 117, 219 N. E. 2d 503, 506 (1966).

application of canons of legal ethics has served to stifle new legal service programs across the country, and will suggest a principle for accommodating the legitimate interests protected by the canons of ethics with the need for new forms of legal services.

I.

A Great Gap Exists Between the Legal Services Americans Need and the Legal Services They Can Afford Under the Traditional Fee System.

At an earlier period in American history, it might have been argued that only the wealthy had need of a lawyer to assist with a civil matter. With few exceptions, only the wealthy ever got a lawyer. The principal tasks of the attorney centered around the sale of real property, and persons without property to buy or sell rarely were aware of their need for counsel. But in the twentieth century, the routine need for legal services became manifest. The complexity of our society has increased the occasions of our need for legal services and has heightened our awareness of the need. In his roles as consumer, lessee, vendee or vendor of property, employee, tortfeasor or tort victim, the average American frequently enters into complex relations which may be characterized as, or may result in, a legal problem. He needs legal advice to recognize and vindicate his rights and to prevent his problems from becoming more serious. It is now "difficult to see how any person can attain maturity and at no time have need for legal advice." Pye, *Role of Legal Services in the Anti-Poverty Program*, 31 LAW AND CONTEMP. PROB. 211, 217 (1966).

In the area of criminal law, the increase in demand for legal assistance has been even more dramatic. The broadened right to counsel established by the decisions in *Gideon v. Wainwright*, 372 U. S. 335 (1963), *Miranda v. Arizona*, 384 U. S. 436 (1966), and *In re Gault*, 387 U. S. 1 (1967), has produced so many requests for aid that already overburdened public defenders' offices have been subjected to unprecedented strains.

The legal profession, like the medical profession, has been slow to adapt to the vastly increased demand for services. We are experiencing a shortage of law schools, of lawyers, of judges, of courts. Every court's calendar is severely congested. Unlike doctors, lawyers have not created categories of legal assistants with less training than their own to administer legal first aid.³ And the legal profession has rigidly insisted upon the exclusive use of a fee system which, together with the low supply and high demand, has priced lawyers far beyond what the average man can pay. Only the relatively wealthy can afford routinely to consult a lawyer about civil matters. In fact, two thirds of lower class and one third of upper class families have never employed a lawyer. Masotti and Corsi, *Legal Assistance for the Poor*, 44 J. URBAN LAW 483, 486 (1967). And a major legal problem is like a major medical problem: one rarely saves in contemplation of such an event; yet should one occur, proper legal help may cost

³ Law students enrolled in Legal Aid programs are occasionally allowed to assist in the representation of clients, but this practice is permitted in only fourteen states. Silverstein, A Change of Pace Conference on Legal Services, working paper presented to the 1967 American Bar Association Convention, Honolulu, Hawaii, August 6, 1967. There is no legal equivalent of the nurse, hygienist, or other sub-doctor professional.

many thousands of dollars. Only the very rich can afford a legal catastrophe.

The profession's answers to this problem have been legal aid to the indigent and, in some types of cases, contingent fees. The indigent have suffered most from the unavailability of adequate legal assistance. The poor, in fact, probably have more legal problems than most Americans, since indigents often have special needs for help in the fields of welfare,⁴ landlord-tenant law,⁵ civil rights,⁶ domestic relations,⁷ consumer problems,⁸ and, of course, criminal law. Legal aid societies have never adequately

⁴ The poor often need lawyers to help avail themselves of their rights under the Social Security Act and state welfare laws. Rights are often denied because welfare procedures are much too slow, clients are arbitrarily cut off, and state programs are administered in a way which violates statute and constitutional law, or because of human failure on the part of the administrators. Under the laws, clients have a right to a hearing on any claims they have, but a hearing is a meaningless device to an uneducated indigent without benefit of counsel. See Sparer, *The Welfare Client's Attorney*, 12 U.C.L.A. L. REV. 361 (1965).

⁵ Victimization of poor tenants by landlords is not uncommon. But a tenant whose landlord is violating a building code or who is evicting him improperly has no adequate remedy unless he has legal help. See Carlin and Howard, *Legal Representation and Class Justice*, 12 U.C.L.A. L. REV. 381 (1965).

⁶ A person aggrieved by the violation of Titles II (public accommodations) or VII (fair employment) of the Civil Rights Act of 1964, 78 Stat. 243, 78 Stat. 253-266 (1964), requires legal representation, as does one seeking enforcement of state civil rights acts and court decrees which are resisted.

⁷ The poor often have problems in this area, and Legal Aid has traditionally been unwilling to assist them in divorce cases. Because the poor have not been able to have legal assistance, our system has been described as a "dual system of family law", ten Broek, *California's Dual System of Family Law*, 16 STAN. L. REV. 257, 900 (1964), which discriminates against the poor by applying different substantive rules.

⁸ A missed payment on an installment purchase usually leads to some legal action—sometimes a suit for repossession and acceleration of the balance due. Many employers fire workers whose wages

met the needs of the indigent, despite the dedicated efforts of hundreds of Legal Aid attorneys. First, the establishment of legal aid offices was neither systematic nor comprehensive. Only relatively large cities had any offices at all; the rural and small-town poor were left unaided. Comment, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 HARV. L. REV. 805, 807 (1967). Even the large cities were not adequately served. In 1962, nine cities with populations over 100,000 had no legal aid programs, and twenty-four such cities had programs which failed to meet the minimum standards of the American Bar Association. Masotti and Corsi, *Legal Assistance for the Poor*, 44 J. URBAN LAW 483, 487 (1967). Second, the amount of money spent for legal aid was infinitesimal; in 1963, it amounted to less than 2/10 of one per cent of the money spent that year for all legal services in the nation.⁹ *Id.* at 487-88.

These quantitative deficiencies naturally produced qualitative shortcomings. To reduce the potential case load to manageable dimensions, legal aid had to set extremely low income eligibility standards. It had to avoid publicity and community education, so that not too many indigents

are attached. Even a consumer with a perfect defense has no adequate remedy unless he has legal help, and this is true also of a consumer who wishes to avail himself of his rights against a merchant who sold defective goods or failed to deliver. See Carlin and Howard, *supra*, n. 5.

⁹ Four million dollars was spent for legal aid in 1963. A budget of thirty million dollars was required in fiscal 1967 to enable the new neighborhood legal offices (see pp. 23-24 *infra*) to serve 400,000-600,000 clients. The chairman of the American Bar Association's committee on legal aid has estimated that there are potentially 14 million indigent cases annually, a volume which would cost between 300 million and 500 million dollars a year if the service were performed by salaried attorneys. The New York Times, August 7, 1967, p. 11, col. 1 (late city ed.).

would know that its services were available. It traditionally refused to help in certain types of cases, such as divorces and bankruptcies, both because of limited funds and because many communities thought of legal aid as charity and did not wish it to assist in the vindication of rights which were vaguely thought of as immoral. And of course, while many talented and self-sacrificing lawyers have worked for legal aid, the low salary and status attached to the position of legal aid attorney discouraged many others from considering the position, so that often a job requiring the talents of a superman was performed by a mediocre attorney. Comment, 80 HARV. L. REV. 805, at 807-09.

One other legal service has been generally available to a person without resources to hire an attorney. If he happens to be a plaintiff, and his complaint happens to be for money damages (usually in personal injury cases), a client can normally have a lawyer prosecute the case for a percentage of the recovery, if successful. At first glance the contingent fee seems like low cost legal service, since the client who has nothing may end up with a large amount of money. Actually the contingent fee is usually a very expensive type of legal service. The lawyer gambles on recovery and, if successful, shares handsomely in the seeming windfall. But, after all, the recovery is not a windfall, but compensation for a loss (often a loss measurable in dollars and cents).¹⁰ The loss of one fourth to one third of this recovery in legal fees is not one that most plaintiffs can "afford", even if it is one they can bear, and contingent

¹⁰ It may be noted that under the tax law, the recovery of damages for personal injury is not "income." INT. REV. CODE OF 1954 § 104.

Contingent fees are further inadequate as a solution because even clients who do not prevail must pay the attorney's disbursements.

fee arrangements should not be thought of as a solution to the problem of inadequate legal services. And even if it were, it is not a solution for the client who is the defendant in a personal injury case, or is threatened with eviction by his landlord, or is sued on a contract. Nor can it help the client who needs an injunction, or a divorce, or who wants to write a will, change his name, or appeal the revocation of his driver's license. Many millions of people are not poor enough to qualify for legal aid or the assistance of a neighborhood legal office, yet not wealthy enough to afford legal services they genuinely need.¹¹ Depending upon the complexity of the cases in which they find themselves involved, millions or tens of millions of Americans are "legally indigent." For them, creative elements in the legal profession are developing new forms of legal services at substantially lower cost.

II.

Creative Elements in the Legal Profession Have Recently Undertaken to Develop New Forms of Practice to Satisfy the Manifest Need for More Plentiful, Efficient and Inexpensive Legal Services.

"Group legal services" may be defined as services performed by an attorney for a group with a common problem, including a group which has formed to establish a plan of prepaid legal service, whether or not the members have a common interest in a particular field of activity.¹² Read

¹¹ See Cox, *Poverty and the Legal Profession*, 54 ILL. B. J. 12, 15 (1965).

¹² This is a simplified version of the more precise definition formulated by the California Bar Association's Committee on Group Legal Services, in their report to the Association. The report is the leading work on the subject and is published in 39 CAL. STATE B. J. at 639 (1964).

broadly, this definition would include legal aid as a group service, since the indigent are a definable group with common problems, served by a salaried attorney. In the case of legal aid, the services are paid for only partly by the indigents aided, through their United Fund contributions; the rest of society contributes the balance. Since the 1930's, some groups of persons not indigent in the strict sense have experimented with plans to provide themselves with cheaper legal services, for which they pay the entire cost.

A group service performs several functions. It informs the members of the group that some of their problems may be legal ones, and that legal assistance is available. It may help refer them to one of a panel of attorneys.¹³ But perhaps the most important function of a group service is to keep the price of legal assistance within a range that members of the group can afford. This is generally done in two ways: (1) by spreading the cost of services performed over the entire group, rather than allowing it to fall upon the member who happens to need a lawyer's help, and (2) by raising the volume of a particular kind of work that the attorney performs, thus lowering the unit cost of the work. See California State Bar Association, Committee on Group Legal Services, *Group Legal Services*, 39 CAL. STATE B. J. 639, 662-67 (1964): Increased volume and the opportunity to specialize can lower the unit cost of work done both by a recommended lawyer who charges a fee in each case and a salaried lawyer retained by the group itself. In the case of a salaried attorney, however, there may be a further reduction in the cost of service, in that an attorney who is guaranteed a particular income

¹³ As in *Brotherhood of Railroad Trainmen v. Virginia ex. rel. Virginia State Bar*, 377 U.S. 1 (1964).

in a given year may be willing to accept a lesser aggregate amount than if he had to rely on the relatively uncertain income that fees provide.¹⁴

Early Group Services

Group legal services first became popular in the 1930's. They were frequently offered as one benefit of membership in automobile clubs. In a typical instance, members paid \$10.00 annual dues to the club, and if they were charged with a traffic offense or sued for a vehicular tort, they could enlist the services either of an attorney on the club's recommended list or of their own choosing. The club took no part in the case, but it paid the lawyer's bill. Employing reasoning similar to that of the Illinois Supreme Court in the present case, the Supreme Court of Massachusetts found that to purchase in advance, for the nominal sum of \$10, all the legal services that might be needed for a year was "utterly at variance with the standards of the legal profession, where the fee . . . is fixed by the nature of the work performed, the skill required and the benefit accruing to the client." The service was enjoined. *In re Maclub*, 295 Mass. 45, 50, 3 N. E. 2d 272, 274 (1936); see *People ex rel. Chicago Bar Association v. Chicago Motor Club*, 362 Ill. 50, 199 N. E. 1 (1935); see also Zimroth, *Group Legal Services and the Constitution*, 76 YALE L. J. 966, 966-67 (1967).

¹⁴ Theoretically the risk-spreading function could be performed independently of the cost-lowering function; members of a group could insure against legal costs without seeking the services of particular lawyers. But the California Committee on Group Legal Services could find no insurance company which was interested in developing a group legal insurance plan. 39 CAL. STATE B. J. 639 at 720 (1964).

Another early group service was the Association of Real Estate Taxpayers. Twenty to thirty thousand property owners contributed fifteen dollars each to a non-profit corporation which was created to bring test suits to protect their property from forfeiture and tax sale. It would have cost an individual \$200,000 to bring such a suit. There, as here, the Illinois Supreme Court held that the association constituted a lay intermediary, and declared the arrangement illegal. *People ex rel. Courtney v. Association of Real Estate Taxpayers*, 354 Ill. 102, 187 N. E. 823 (1933).

The Copyright Protection Bureau fared better in court. Eight motion picture distributors organized and made contributions to the Bureau. When the Bureau discovered an unauthorized exhibition of a picture, its salaried legal staff could settle or sue the exhibitor. The court costs of the suit were charged to the aggrieved distributor, but the lawyers' salaries were paid by a general assessment against all of the members. The Bureau was held not to be engaged in the unlawful practice of law. Each member had a right to have a legal department to bring suits, and the "mere fact it created its agency for the above purpose under a trade name does not involve any illegality." *Vita-phone Corp. v. Hutchinson Amusement Co.*, 28 F. Supp. 526 (D. Mass. 1939). This court, unlike others, did not even dwell on the group nature of the arrangement.¹⁵

¹⁵ One author has suggested that this case is distinguishable from the Real Estate Taxpayers case only in that it was brought in a federal court. Derby, *Unauthorized Practice of Law*, 54 CALIF. L. REV. 1331, 1357 n. 149 (1966).

Special Interest Groups

Were it not for the early cases declaring group services unlawful, the most prevalent form of group services today might be those organized by special interest groups whose members have a peculiar need for legal assistance; *e.g.*, automobile clubs. But the ethical rules invoked by local bar associations have impeded the establishment of such group services. For example in California, a large social club whose members belonged to a particular ethnic group wished to hire an attorney to assist them with their common legal problems, especially those dealing with naturalization or their status as aliens. This association was prevented by opposition from the State Bar. California State Bar Association, Committee on Group Legal Services, *Group Legal Services*, 39 CAL. STATE B. J. 639, 686 (1964). The California Teachers' Association, however, does provide its members with some of the advantages of group service. In cases involving the protection of professional rights, teachers may choose their own attorneys and the association will pay 75% of the fee beyond \$50 up to \$750. *Ibid.* at 676.

The only major "professional association" offering relatively comprehensive legal services to its members is the United States Army. Under a plan set up in 1943, the Army has been providing servicemen and their dependents with free legal advice on all civil matters, "from adoption to wills", *other* than problems dealing with military administration or justice. Although the serviceman must have a civilian lawyer to go to court, all assistance up to that point is provided by the program. See Winkler, Legal Assistance for the Armed Forces, 50 A.B.A.J. 451 (1964).

Defendants' Liability Insurance

The most widespread form of group service, though rarely thought of as such, is the legal assistance given defendants in automobile negligence cases by their liability insurers. The insurance not only protects the insured against liability, but against the legal fees involved in defending a suit. Typically the insurance company will provide an attorney to defend a suit. The cost is borne by all the members of the group of insured drivers, as a part of the premiums paid. Public liability, defamation, and even malpractice insurance also usually cover legal fees.

Institutions Promoting a Cause

Institutions which seek to promote a political or social cause through litigation typically offer a group legal service. They usually retain one or more salaried attorneys who prosecute the cases of litigants from the groups served, who may or may not formally be members of the organization. *Amicus* NAACP Legal Defense Fund has no membership except for its board of directors. With its staff of lawyers and funds it raises for itself it has provided counsel to more or less clearly defined groups: students wishing to attend integrated schools, civil rights workers, Negroes seeking equal opportunity for employment, etc. The NAACP (a membership corporation separate and apart from the Defense Fund) is financed in part by membership dues, in part by private contributions. It too has a legal staff. See *N.A.A.C.P. v. Button*, 371 U. S. 415 (1963). The American Civil Liberties Union is similarly financed, and supplies counsel to litigants in selected civil liberties cases.¹⁶ Even local bar associations have offered

¹⁶ The Union once participated in cases principally as *amicus curiae*, but now supplies counsel in 80% of its cases.

this type of group legal service. In 1940, the Atlanta Bar Association established a committee to fight usurious lenders. It advertised that it would provide free legal service to anyone who would sue for recovery of payments made on usurious loans.¹⁷

Corporation. Fringe Benefits

Legal service as a fringe benefit of corporate employment offers limitless possibilities for the extension of low cost legal assistance to millions who need it. It is well known that many companies already offer this service to their executives. In some cases, staff or retained counsel charge the executives a discounted fee or no fee for private services; in others, the fee is the usual fee for the service, but is billed to the corporation.¹⁸ But just as thousands of companies now offer prepaid medical service to all employees, legal aid could be extended either in clinics staffed by company lawyers or through recommended or completely independent attorneys who would be paid by the companies, perhaps charging the clients a small deductible fee. At least one company extended this service to all of its workers; during World War II, a California defense plant employed salaried lawyers to handle the personal legal problems of its employees. The lawyers aided 3,461 employees in 1944, and saved the company an estimated 15,364 man-hours. The program was terminated when the war ended, but company officials said it had succeeded in mini-

¹⁷ This practice was upheld against a charge by creditors that it was unethical. *Gunnels v. Atlanta Bar*, 191 Ga. 366, 12 S.E. 2d. 602 (1940).

¹⁸ This practice, though widespread, is officially considered unethical. See American Bar Association, *Informative Opinion of the Committee on Unauthorized Practice of the Law*, 36 A.B.A.J. 677, 678 (1950).

mizing the objective and subjective effects that legal problems had on workers. See California State Bar Association, Committee on Group Legal Services, *Group Legal Services*, 39 CAL. STATE B. J. 639, 679-81 (1964).

Union Benefits

A few labor unions have devised a variety of means for providing their members with inexpensive legal service. This Court examined one of these plans in *Brotherhood of Railroad Trainmen v. Virginia ex. rel. Virginia State Bar*, 377 U. S. 1 (1964). There the Brotherhood had selected, in each region of the country, a lawyer reputed to be honest and skillful. When a member was injured, the union would advise him to see a lawyer and would recommend the lawyer it had selected for that region. The member had to pay the fee, but he was assured the assistance of an expert in railroad injuries, and since the lawyers selected were called upon to perform a high volume of similar work, they charged the members somewhat less than the usual fee.¹⁹

The United Mine Workers' plan, under attack here, seeks to do somewhat more. The union retains its own salaried attorney, and injured members may choose to avail themselves of his services. This type of plan is much less costly to the members than that of the Trainmen. Local 12 of the Mine Workers has 14,000 members. If the attorney's salary and office expenses amount to \$40,000 a year, less than \$3.00 of each member's dues is being allocated to "legal insurance." The Mine Workers' plan spreads the risk of

¹⁹ The Brotherhood and the lawyers agreed that a contingent fee of no more than 25% would be charged. When the plan was originally established, workers had to pay attorneys contingent fees of up to 50%. *In re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 393, 150 N.E. 2d 163, 195 (1958).

legal fees among all its members, and reduces aggregate costs significantly by employing a salaried lawyer.²⁰

But even the Mine Workers' plan fails to exploit the full cost-reducing potential of group service. For two years an affiliate of the New York Hotel Trades Council retained a salaried lawyer to advise its members on the full range of legal problems that confronted them as members of society other than those arising from their employment. Most of the work done by the attorney concerned landlord-tenant law and wage attachments by merchants. An infinitesimal portion of the union treasury was spent on this project, but members felt they could consult the attorney freely so as to avoid trouble as well as resolve conflict. Similarly, it is "not uncommon" in California for unions to refer members to the attorney retained by the union for its own affairs, and to pay the fees for the first visit. One California law firm has agreements with five unions, under which it provides service in workmen's compensation cases for all members who wish it, and also gives legal advice without charge to members with personal legal problems. And for several years in the late 1950's the Los Angeles culinary industry had collective bargaining agreements under which management paid an annual sum to a legal aid trust fund. A panel of five lawyers gave union members legal advice for up to one hour per civil problem and the attorneys were reimbursed from the trust fund at the rate of twenty dollars per hour. Most of the problems han-

²⁰ Another "single issue" service is provided members of the New York State locals of the International Ladies Garment Workers Union. Lay advocates on the union's staff represent union members before administrative panels in contested claims for unemployment compensation. Union lawyers take appeals to court if necessary. The service costs each member pennies a year; each case would cost many hundred times that sum if handled by an outside lawyer.

dled by the panel centered around debtor-creditor and landlord-tenant relationships, and automobile accidents. See California Bar Association, Committee on Group Legal Services, *Group Legal Services*, 39 CAL. STATE B. J. 639, 670-75 (1964).

Legal Assistance Associations

A major recent development in the extention of legal services is the Legal Services Program sponsored and largely financed by the United States government's Office of Economic Opportunity. This program is designed to expand the resources available to indigents by improving on the legal aid concept. The "neighborhood law office" is a key innovative feature. Over six hundred of these offices have been established in communities of every size across the nation. Unlike most legal aid offices, the neighborhood offices are located in the residential districts they serve, not downtown. They are therefore far more accessible to the poor, many of whom rarely leave their neighborhoods. They are often situated in community action centers which offer a variety of services, so that doctors and social workers may easily refer to lawyers clients who do not realize their problems are legal. The neighborhood offices employ salaried attorneys, who attempt to convince neighborhood residents that they are on their side, that they are their advocates—even against government agencies. The attorneys engage in community organization and legal education. They give indigent clients advice on nearly all legal problems, including matrimonial problems, and go to court whenever necessary. Neighborhood offices also differ from legal aid in that they are not reluctant to take appeals when the client so desires. Legal aid seldom succeeded in pressing precedent-making cases, because understaffing required

that nearly all cases be settled, and in those that did go to trial, the small sums involved did not justify the expenses of appeal. But since the neighborhood attorney sees his role as advocate for both the client and the neighborhood (when their interests coincide) he is less likely to discourage an appeal. See generally Comment, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 HARV. L. REV. 805 (1967); OFFICE OF ECONOMIC OPPORTUNITY, THE POOR SEEK JUSTICE (1967); OFFICE OF ECONOMIC OPPORTUNITY, FIRST ANNUAL REPORT OF THE LEGAL SERVICES PROGRAM TO THE AMERICAN BAR ASSOCIATION (1966); UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, CONFERENCE PROCEEDINGS: THE EXTENSION OF LEGAL SERVICES TO THE POOR (1964); OFFICE OF ECONOMIC OPPORTUNITY, NATIONAL CONFERENCE ON LAW AND POVERTY (1965). See also Cahn and Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L. J. 1317 (1964).

While the neighborhood office is a novel concept, it is by no means the only experimental feature of the program. In fact, "there is no such thing as a 'standard' legal services program. Innovation is encouraged and is limited only by the ingenuity of the developers of a proposal." OFFICE OF ECONOMIC OPPORTUNITY LEGAL SERVICES PROGRAM, GUIDELINES 4 (1966). On New York City's Lower East Side, mobile law offices in trailers search out those so poor and uneducated that even a neighborhood office is too far away. OFFICE OF ECONOMIC OPPORTUNITY, THE POOR SEEK JUSTICE 8 (1967). And in northern Michigan, attorneys for the poor have offices in six towns and ride circuit through areas too sparsely populated to support their own neighborhood offices. OFFICE OF ECONOMIC OPPORTUNITY, FIRST ANNUAL REPORT OF THE LEGAL SERVICES PROGRAM 14 (1966). In

Northern Wisconsin, a program called Judicare is being tested: Indigents take their problems to any attorney, and the government will pay the fee, which is not to exceed 80% of the State Bar's minimum fee schedule. Preliminary data indicate that this program costs at least 50% more than a neighborhood office program of similar scope. Comment, 80 HARV. L. REV. 805, 849 (1967).²¹

Another remarkable experiment of the legal Services Program is the use of lay advocates to assist with minor problems. "Not every injury requires a surgeon; not every injustice requires an attorney . . . We need what is, in effect, a new profession of advocates for the poor . . . That job is too big—and, I would add, too important—to be left only to lawyers." Nicholas deB. Katzenbach, in DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, CONFERENCE PROCEEDINGS: THE EXTENSION OF LEGAL SERVICES TO THE POOR (1964). The Dixwell Legal Rights Association in New Haven, Conn., for example, employs and trains indigents to assist their own neighbors to vindicate their rights. The lay advocates appear for their clients in informal administrative hearings before Welfare Department personnel when welfare rights have been denied. The program's goal is to prevent problems from becoming so complex that the services of a lawyer are required. But if a lawyer is needed, clients are referred to the New Haven Legal Assistance Association.

²¹ The advantages for urban areas of a salaried neighborhood lawyer rather than Judicare have been compiled by Judge Raymond Pace Alexander: Judicare leaves the poor to the yellow pages for names of lawyers; neighborhood offices can train specialists, watch patterns of cases and bring test suits, draft legislation, and provide comprehensive service. *In re Community Legal Services, Inc.*, #4968, Common Pleas #4 (March Term, 1966).

Finally, the Office of Economic Opportunity contemplates that the indigent may some day be served by groups which they themselves form.²² As poverty is eradicated, the independently financed neighborhood offices may be gradually transformed into classic group services.

III.

The Rigid Employment of the Canons of Ethics by State and Local Bar Associations to Throttle These New Forms Is Retarding Progress Toward Satisfying the Manifest Need for Services.

In 1966, F. William McCalpin, chairman of the American Bar Association's Special Committee on Availability of Legal Services, wrote that *Button and Trainmen* had brought to light many apparently long existing, though *sub rosa*, group legal service plans. He cited as an example the service offered its members by the New York Hotel Trades Council, described in the previous section. "Although protests have been made by some segments of the organized Bar," he wrote, "in today's climate the effect of such protestation is doubtful." McCalpin, *A Revolution in the Law Practice*, 15 CLEV.-MAR. L. REV. 203, 205 (1966). The organized Bar has done more than protest. The disciplinary committee of the New York County Lawyers Association, by initiating an investigation of the Hotel Trades Council program, succeeded in closing it down.

²² If, despite the indigency of its individual members, a group can afford to hire an attorney, neighborhood offices may refuse to provide free counsel; thus a means test is applied to groups as well as individuals. OFFICE OF ECONOMIC OPPORTUNITY, LEGAL SERVICES PROGRAM, GUIDELINES 21 (1966).

When its salaried attorney resigned to take another job, the union could not find another lawyer willing to fill the position, given the threat of disciplinary proceedings and possible disbarment. The Lawyers Association contended that the group nature of the service might violate ethical principles, and would not accept the union's claim that its activities were protected by the rationale of *Trainmen*. The union's regular attorney says that but for the threat of proceedings by the Bar, filling the position would have been very easy.

Bar opposition to programs extending legal service must come as no surprise to this Court. In *NAACP v. Button*, the Court considered the Virginia Bar Association's opposition, on ethical grounds, to an offer of service by the salaried attorneys of a group promoting a cause by means of litigation. In *Brotherhood of Railroad Trainmen*, the Court encountered the Virginia Bar's labeling of a union referral plan as "unauthorized practice." Despite the Court's opinions in those cases, Bar associations have, if anything, intensified their attacks on group services for "unauthorized practice." Bar opposition to group service for the social club of immigrants in California is one instance. What happened to the Hotel Trades Council is another. The Illinois Mine Workers Case is another.

The accusation of "unauthorized practice" has even been leveled at some of the neighborhood law office programs sponsored by the Office of Economic Opportunity. In a number of cities, bar associations have gone so far as to challenge the programs in court. In the District of Columbia, for example, a suit against the legal assistance project has been pending for over a year. *Harrison v. United Planning Organization*, Civ. #2282-65 (D. C., D. C.). A temporary restraining

order was secured against the California Rural Legal Assistance Association in Stanislaus County; the order expired, but the Association is now defending a suit on the merits. *Stanislaus Co. Bar. v. California Rural Legal Assistance*, #93302 (Superior Ct., Stanislaus Co. (1967)). In Houston, the courts refused to enjoin the program, finding it to be within the "charity" exemption of Canon 35. *Touchy v. Houston Legal Foundation*, Doc. #4636 (Ct. Civ. App. 1967). A suit by four bar associations is pending in Florida, *Trautman v. Shriver*, #66-188-ORL Civil (D. C., M. D. Fla.), and a private attorney sued the local program in Roanoke Valley, Va., *Jones v. Roanoke Valley Legal Aid Society*, #8986 (Hustings Ct., Roanoke, 1967), but recently took a voluntary nonsuit. In other instances, courts in nonadversary proceedings have disapproved on grounds of ethical impropriety aspects of the programs.²³

²³ In Onandaga County, New York, the statute permitting charitable corporations to handle civil cases was in June, 1967, held to preclude legal assistance from giving advice or aid in juvenile or criminal cases. *Matter of Pinkert*, #299 (App. Div., 4th Dept., June 29, 1967). Pennsylvania and New York State require charitable corporations which propose to practice law to obtain court approval. Community Legal Services of Philadelphia was warmly endorsed by the Court despite objections from some members of the bar. *In re Community Legal Services, Inc.*, #4968 (Common Pleas #4, March Term 1966). But legal assistance in New York City suffered a very serious setback when the New York Appellate Division disapproved its charter. The proposed association would have had twenty directors: 13 lawyers and seven representatives of the poor. This would have conformed with the requirement in the Economic Opportunity Act that "the poor must be represented on the board or policy-making committee of the program to provide legal services." OFFICE OF ECONOMIC OPPORTUNITY LEGAL SERVICES PROGRAM, GUIDELINES 11 (1966); see 75 Stat. 516 (1964). This was one feature of the program objected to by the court. The court seemed to say that a program would commit unauthorized practice unless every member of the board of directors were an attorney. *In re Community Action for Legal Services, Inc.*, 26

In some other cities, bar groups have effectively opposed the neighborhood law office programs without actually going to court. What happened in New Haven is illustrative. During 1963, the Legal Aid Committee of the New Haven County Bar Association approved the plans for the formation of the New Haven Legal Assistance Association, although the issue was never formally presented to the Bar Association in a general meeting. In 1964, as the Legal Assistance Association was preparing to begin operations, it informed the Bar candidly of its plans. In an extremely bitter meeting of the County Bar Association on November 16, 1964, after a debate centering around the need for the program and the concept of unauthorized practice, the Bar Association voted to go on record "as opposing the entire program." VERBATIM PROCEEDINGS, MEETING OF THE NEW HAVEN COUNTY BAR ASSOCIATION, November 16, 1964 (copy on file in the Yale Law Library); see Parker, *The Relations of Legal Service Programs with Local Bar Associations*, in OFFICE OF ECONOMIC OPPORTUNITY, NATIONAL CONFERENCE ON LAW AND POVERTY 126 (1965). The Connecticut State Bar Association subsequently found the program consistent with the Canons of Ethics, and the neighborhood law offices were opened, but the county bar has continued to challenge the propriety of the program. Defending the program before committees of the County Bar Association has consumed much of the neighborhood lawyers' time; the program's executive director estimates that during the program's first

App. Div. 2d 354, 361, 274 N.Y.S. 2d 779, 787-88 (1966). As a result of this case, New York City's legal services program, though approved and funded by the federal government in July 1966, is not yet in operation (although a few neighborhoods do have minuscule services).

year of operations, one third of his time was spent negotiating with the local bar. Thus even where legal assistance programs prevail, ethical challenges by local bar associations can have serious adverse effects on their ability to fulfill their intended purposes.

Furthermore, although actual attacks have been sporadic, legal assistance programs everywhere have had to make two major concessions to the organized bar. First, the federal program ignores the concept of "legal indigency" i.e., of indigency in relation to the costs of a particular case. Instead, a rigid means test is imposed. A family of four with an income of \$5200 per year may not take advantage of the program, even if hiring a lawyer to help them would cost several hundred or even several thousand dollars. In some rural areas the qualifying income level is \$2000. For a single person, the eligibility level ranges from \$1200 in rural areas to \$3380 in a few cities.

OFFICE OF ECONOMIC OPPORTUNITY, FIRST ANNUAL REPORT OF THE LEGAL SERVICES PROGRAM 9 (1966). Second, neighborhood law offices may not provide free legal advice in cases which a lawyer would handle for a contingent fee, notwithstanding that a contingent fee may reduce significantly a much needed compensatory recovery. "The test should be whether the client can obtain representation."

OFFICE OF ECONOMIC OPPORTUNITY, LEGAL SERVICES PROGRAM, GUIDELINES 20 (1966). These two rules assuage the Bar's dominant concern: that neighborhood law offices not take business from local attorneys. That concern is reflected in the reasoning by which the Canons of Ethics and the Illinois Supreme Court put programs assisting "indigents" in a special category. Unfortunately, these two rules severely limit the ways in which the neighbor-

hood law offices could help fill the unsatisfied need for legal services at a cost that most families can afford.

It may at first seem odd that despite the two rules limiting the scope of legal assistance associations, and despite Canon 35's specific exemption of programs aiding indigents, and despite the American Bar Association's warm endorsement of the federal neighborhood law office program, local bar groups have continued to make ethical attacks on legal assistance to the poor in every part of the country. But this phenomenon should not be too surprising. Local bar associations are often dominated by independent practitioners whose annual profits are often much in doubt and who fear even a slight loss of clientele to free assistance programs. In New Haven, all of the 24 lawyers in attendance from firms of over 10 voted to support the program, but single practitioners voted 111-33 to oppose it. Parker, *The Relations of Legal Service Programs with Local Bar Associations*, in OFFICE OF ECONOMIC OPPORTUNITY, NATIONAL CONFERENCE ON LAW AND POVERTY 126, 131 (1965). See also CARLIN, LAWYERS ON THEIR OWN (1962); CARLIN, LAWYERS ETHICS 23-36 (1966) (clientele of solo practitioners and a statistical profile of the New York County Lawyers Association). And "it is not safe to assume that members of the local bar or leaders of the local bar association have any knowledge of, or sympathy for, the cause of legal aid in its traditional form or of the pronouncements of the American Bar Association or of the state bar association on the subject, let alone any knowledge of, or sympathy for, a program of extended legal service." Parker, *The Relations of Legal Service Programs with Local Bar Associations*, in OFFICE OF ECONOMIC OPPORTUNITY, NATIONAL CONFERENCE ON LAW AND POVERTY 126 (1965).

Further, the exception contained in Canon 35 and in the opinion of the Illinois Supreme Court cannot really protect service for indigents from ethical attack, for it is founded upon no logic whatsoever. The Illinois Court fears a possible conflict of interest which might divert a salaried attorney's true loyalty from his client to the union executive board which controls his paycheck. But a neighborhood lawyer's hypothetical conflict of interest is not a whit different. He is bound to serve his client, but his salary is paid either entirely by the federal government, or, in most cases, 90% by the federal government and 10% by a local public or private fund. And he is responsible to an executive committee which hired him, an executive committee perhaps more interested in questions of legal policy than the executive board of the Mine Workers Union. Given the rationale of the Illinois court's opinion, no legal assistance program can feel assured that a court will not carry it to its logical conclusion. In fact, the reasoning of the Illinois court threatens legal assistance even more than it does classic group service, since typically a member of a group plan has some control over the hired attorneys, some voice, directly or indirectly, in how his money is spent. By contrast, indigents have only the most remote control, as voters in federal elections; over the operations of the Legal Services Program.²⁴ The fragility of the exemption for programs aiding indigents is made

²⁴ In addition, indigents may have a degree of control through representatives of the poor on the programs' policy boards, but those representatives need not have voting power, much less majority voting power, and in many areas the provision of the statute requiring such representation is not being complied with. See Comment, *Participation of the Poor: Section 202(a)(3)-Organizations Under the Economic Opportunity Act of 1964*, 75 YALE L. J. 599 (1966).

further evident by the obvious truth that indigents no less than wealthy men deserve the complete loyalty of their attorneys.

Confusion over the scope of the constitutional rights described in *Button* and *Trainmen* has rendered vulnerable the entire spectrum of new group services, from corporate and union fringe benefits and facilities of private associations to the neighborhood law offices sponsored by the federal government. The nature of these rights must now be clarified so that lawyers may continue the great experiments they have begun in expanding legal service in the United States. Canons of Ethics inappropriate to modern needs should not be permitted to stifle these efforts.

In 1964, a committee of the California State Bar Association recommended that the Rules of Professional Conduct be amended to allow, with appropriate safeguards, the institution of group legal service plans, including plans under which groups hired salaried attorneys, California State Bar Association, Committee on Group Legal Services, *Group Legal Services*, 39 CAL. STATE B. J. 639, 723-26 (1964). A few months ago, the Board of Governors of the California Bar "noting [*Trainmen* and *Button*] nevertheless concluded that it is not in the interest of the public or the administration of justice to apply the principles of those decisions to legal service plans at the expense of certain Rules of Professional Conduct. Except as they conflict with the Supreme Court decisions, these rules will continue to be enforced." STATE BAR OF CALIFORNIA REPORTS, May-June, 1967, p. 1, col. 1. Among the reasons given by the Board was that modification of the Rules would be "premature" in view of the pendency of this case. *Ibid.* The American Bar Association, too, is seeking

guidance as to the extent of the rights established by this Court's earlier decisions. Partially as a result of the shock which the Association received in *Trainmen*,²⁵ it established a Special Committee on Evaluation of Ethical Standards. See Cheatham, *A Re-evaluation of the Canons of Professional Ethics*, 33 TENN. L. REV. 129, 130 (1966). The decision in this case may have even a more profound effect than *Trainmen* on the availability of legal service in America. "The crucial importance of this case cannot be minimized. Many unauthorized practice cases have been of vital concern to specific areas of the unauthorized practice movement, but this case above all holds the key to how, and in what manner, attorneys are to practice law in contemporary times." American Bar Association, Standing Committee Unauthorized Practice of the Law, *Current Report*, 32 UNAUTHORIZED PRACTICE NEWS 56, 65 (1966).

²⁵ Forty-eight state bar associations joined in the petition for rehearing which this Court denied. California State Bar Assn., Committee on Group Legal Services, *Group Legal Services*, 39 CAL. STATE B. J. 639, 699 (1964).

IV.

There Is a Constitutional Right to Associate to Give and Receive Legal Services Within Any Institutional Framework Which Adequately Protects Clients From Injury. The Implementation of This Right Is Wholly Consistent With the Fulfillment of the Mission of the Canons of Ethics and the Recognition of New Legal Forms to Meet New Legal Needs.

States have a legitimate interest in protecting persons who seek legal advice from being defrauded, from being assisted by persons incompetent to deal with their problems, and from being victimized by lawyers unable to accord them their complete loyalty. The protection of these interests has been the traditional mission of the Canons of Ethics. But where there is no danger of injury, we submit, potential clients have a right to associate to receive legal services, and lawyers have a right to provide those services, regardless of whether the lawyer charges the client a fee. The ethical rules against unauthorized practice, corporate practice, and lay intermediaries were not written to harass lawyers wishing to experiment with systems of payment other than the fee and should not be so employed by respondents and other bar associations today. These rules, and the valid interests they protect, are fully reconcilable with the constitutional right to associate to bring or defend a lawsuit.

There is a constitutional right to associate to bring or defend a lawsuit.

In *N.A.A.C.P. v. Button*, this court reviewed a form of group legal service performed by *amicus* NAACP Legal Defense Fund and the NAACP, two institutions which

pursue a social cause by means of litigation. In the arrangement to which the Court accorded constitutional protection, the NAACP had hired a staff of fifteen Virginia attorneys, who were paid at a per diem rate of up to sixty dollars a day plus expenses, a sum smaller than the compensation ordinarily received for equivalent private professional work. 371 U. S. at 420-21. Like the Mine Workers, members of the NAACP received a particular kind of legal service at a cost much lower than that which would prevail under a fee arrangement, and they paid for it in advance, indirectly, through payment of dues to the association.²⁶ It is true that the main issue in that case was solicitation rather than group services, and the Court read the Virginia decree broadly as proscribing "any arrangement by which prospective litigants are advised to seek the assistance of particular attorneys," not only the plan actually employed by the N.A.A.C.P. But the Court, clearly aware that the attorneys were paid *per diem* by the Association, see 371 U. S. at 420, and that the organization was "financing litigation," 371 U. S. at 447 (concurring opinion of Mr. Justice White), explicitly stated that "here the *entire arrangement* employs constitutionally privileged means of expression" 371 U. S. at 442 (emphasis added). In addition, the Court stated that "*nothing* that this record shows as to the nature and purpose of NAACP activities permits an inference of any injurious intervention in or

²⁶ In *Button*, most of the attorneys received their compensation for each day of service rendered, rather than for each year, but there, as here, the money came from the association, not the client. And the general counsel of the NAACP, who directed the litigation did receive an annual salary, as did all of the staff attorneys of the NAACP Legal Defense Fund.

control of litigation which would constitutionally authorize the application of [the Virginia statute]." 371 U. S. at 444 (emphasis added). In other words, neither the mere fact that the group paid the attorney serving its members, nor the *possibility* that the group would have an interest in establishing a precedent which would be contrary to an individual client's interest,²⁷ was sufficient to support the state's claim of a supervening state interest.²⁸ The Court noted the total absence of a demonstrated *actual* conflict of interest: "the aims and interests of NAACP have not been shown to conflict with those of its members and non-member Negro litigants." 371 U. S. at 443. And it must be noted that the plan held to be protected in *Button* was not one falling under any exception for assistance to indigents; although most of the clients could not afford the high costs of complex litigation, there was no indication that they were indigent by any ordinary standard.

The Illinois Supreme Court sought to distinguish *Button* on the ground that the civil rights litigation which the N.A.A.C.P. encouraged was entitled to some special constitutional protection, which "cannot as such be equated with the bodily injury litigation with which we are concerned here." 35 Ill. 2d 112, 123, 219 N. E. 2d 503, 509 (1966). Indeed, some language in the *Button* opinion supports this reading. See 371 U. S. at 431. But the *Trainmen* case demonstrates that constitutional protection of the

²⁷ Compare Mr. Justice Harlan's dissenting hypothetical, 371 U.S. at 462, with the Illinois Supreme Court's hypothetical, 35 Ill. 2d 112, 121, 219 N.E. 2d 503, 508 (1966).

²⁸ This Court has also noted, in *Trainmen*, that British unions "retain counsel to represent members in personal lawsuits, a practice similar to that which we upheld in *Button*." 377 U.S. at 7.

associational right to litigate does not depend on the subject matter of the group's litigation. Vindication of federal statutory rights, as in *Trainmen*, state statutory rights, as here, and common law rights are equally important social objectives. Tort suits are of public concern both as vindication of rights and as a means of changing the law affecting the entire public. "[P]rivate suits affect the public in all cases, not just the big ones. In deciding a tort case, a court sets its course in future torts cases. Every future tort claimant is affected, as is every insurance company, and therefore every policyholder. As the circle gets larger the effect diminishes, but the cumulative effect of the torts cases on the public is great." Zimroth, *Group Legal Services and the Constitution*, 76 YALE L. J. 966, 989 (1967). The pecuniary motives of the tort plaintiff do not diminish the public importance of his suit; as Zimroth points out, N.A.A.C.P. members suing for integrated schoolrooms may have desired for their children the pecuniary advantages of a better education. *Ibid.* It therefore appears that the members of the Mine Workers Union, no less than the members of the NAACP, have a constitutional right to join together to hire a lawyer to promote their interests by giving them legal advice and assistance.

Lawyers have a constitutional right to work for a group on a salary basis in the absence of a showing of actual danger of injury to clients.

Fourteenth Amendment theory for reversal of the decision below may be formulated in another way. This Court has long held that the "liberty" protected from state action by the due process clause includes freedoms not specifically enumerated in other sections of the Constitution. "While

this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual . . . to engage in any of the common occupations of life. . . ." *Meyer v. Nebraska*, 262 U. S. 390, 399 (1923), citing dictum in the *Slaughterhouse Cases*, 83 U. S. (16 Wall.) 36 (1872). At the time that *Meyer* was decided, it was held that "this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect." 262 U. S. at 399-400. In recent years the Court has refined this doctrine: today "[w]here there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." *Griswold v. Conn.*, 381 U. S. 479, 497, 504 (1965) (concurring opinions of Mr. Justice Goldberg and Mr. Justice White), *Bates v. Little Rock*, 361 U. S. 516, 524 (1960). See *McLaughlin v. Florida*, 379 U. S. 184, 196 (1964): where the state police power trenches upon a constitutionally protected freedom, "[s]uch a law, even though enacted pursuant to a valid state interest, bears a heavy burden of justification, as we have said, and will be upheld only if it is necessary, and not merely rationally related, to the accomplishment of a permissible state policy."²⁹ Thus the right to engage in the practice of law,

²⁹ In *McLaughlin*, the Court was dealing with a liberty protected by the equal protection clause, not an unenumerated freedom. But this distinction is not significant, for the unenumerated liberties are as fundamental as those which are listed. See the concurring opinion of Mr. Justice Goldberg in *Griswold v. Conn.*, 381 U.S. at 486.

like the right to pursue any other occupation, is one which the state may regulate and control, but it may not do so merely on the basis of remote hypotheses of potential harm. Regulation must be *necessary* to the protection of the state's residents. See *McLaughlin v. Florida*, *supra*, 379 U. S. at 197 (concurring opinion of Mr. Justice Harlan).

This rule does not require the courts to act as super-legislatures sitting in judgment on the wisdom of state regulatory legislation. The task of the courts is merely to judge whether the justifications which the state offers for its controls are genuine, realistic fears of harm, or simply makeweight arguments devised to shore up vague and insubstantial, or illegitimate, or non-existent state policies. This is a function which courts have been performing routinely for years. In *Meyer*, Nebraska offered as a justification of its ban on instruction in German that the law would promote civic development and enable the children to become citizens of the most useful type, yet the Court found this to be "no adequate reason" in time of peace. 262 U. S. at 401-402. In *McLaughlin*, the state argued that its anti-cohabitation law was designed to prevent breaches of the basic concepts of sexual decency, but the Court saw no reason why the particular statute, one which infringed upon personal liberty, was necessary. In *Schwartz v. Board of Law Examiners*, 353 U. S. 232 (1957), a case dealing with the right to practice law, see 353 U. S. at 239 n. 5, the state sought to prevent Schwartz from practicing law because he had used aliases, had been arrested several times, and had been a member of the Communist Party, yet the Court held that "there is no evidence in the record which rationally justifies a finding" that he was morally unfit. The court noted that the State had ample

means to discipline Schwere if he were to engage in real misconduct, but that it was improper for the state to infer from his record that he would cause actual injury to his clients or anyone else. 353 U. S. at 246-247, 247 n. 20. The state in *Griswold* offered several possible justifications for its law proscribing the use of contraceptives, but even the argument from administrative convenience was described as "fanciful." 381 U. S. at 506 (concurring opinion of Mr. Justice White). "At most the broad ban is of marginal utility to the declared objective." 381 U. S. at 507 (concurring opinion of Mr. Justice White). Finally, in the recent case of *Fenster v. Leary*, — N. Y. — (Court of Appeals, July 7, 1967), the New York Court of Appeals considered the state's argument that the New York vagrancy law was necessary to "prevent there coming into existence a 'class of able bodied vagrants . . . [supporting] themselves by preying on society and thus [threatening] the public peace and security.'" But the Court had no trouble in determining that the statute punished conduct "which in no way impinges on the rights or interests of others and which has in no way been demonstrated to have anything more than the most tenuous connection with prevention of crime and preservation of the public order," and it ruled that the law was an unconstitutional deprivation of due process.

In a sense, these cases represent the sometimes feared return of "substantive due process." Cf. McCloskey, *Economic Due Process and the Supreme Court—An Exhumation and Reburial*, 1962 S. CT. REV. 34, 59-62 (1962). If so, they demonstrate that if kept within proper bounds, the doctrine is not unmanageable. The judicial process is fully competent to distinguish real from imagined harm. In any event, the present case requires no extension of the doc-

trine beyond its present bounds. In *Meyer*, the Court upheld the right of a teacher to teach in the language he chose to willing students, in the absence of real injury to anyone. In *Griswold*, the Court protected the right of a doctor to give birth control information to his patients, in the absence of demonstrated harm. Surely an attorney has a corresponding right to provide legal services to willing clients, for a fee, for a salary, or for nothing at all, unless the state can show that his doing so leads to a more than speculative danger of injury.

Under either constitutional theory, the state's legitimate interest in protecting clients from injury may be reconciled with satisfaction of the clients' needs for legal services.

The Illinois Supreme Court suggests that lawyers should be allowed to provide group legal service to indigents, but not to clients who are able to pay. This rule serves only one principle: that the organized bar should keep all paying clients and leave those who cannot pay to the government, private charity, and those attorneys who will volunteer their time.³⁰ It does not even pretend to protect from abuse those for whom group service would be permitted. It is impractical because, as has been pointed out,³¹ there is no sharp line between indigents and non-indigents.³² And, most importantly, it turns its back on the demonstrated need for new forms of legal services.³³

³⁰ See pp. 30-31, *supra*.

³¹ See pp. 10-11, 14, 30, *supra*.

³² It may be noted that persons in a middle income bracket may take advantage of the British Legal Aid system and pay a portion of the costs. See Utton, *The British Legal Aid System*, 76 YALE L.J. 371, 375 (1966).

³³ See pp. 9-14, *supra*.

Another rule is implicit in the Illinois court's opinion: look to the nature of the proposed institution, and, if an evil can be conjured, the state may proscribe the arrangement. Thus the court stated that, "[c]onceivably, the interest of the former [union] might be best served by utilizing a particular case as a testing vehicle for appellate review of untried legal theories in the hope of securing a determination beneficial to union members collectively in future litigation, whereas the injured member may prefer a proffered settlement deemed wholly adequate to him." 35 Ill. 2d 112, 121, 219 N. E. 2d 503, 508 (1966) (emphasis added). The state bar association did not allege one instance of this type of conduct. In fact, the opinion reveals that the general practice of the union attorney was to reach the best settlement possible for the client and then suggest that the client accept it. The court's *a priori* style of reasoning is, however, rather common in this field. An American Bar Association committee, commenting on the practice of corporations offering their employees legal services as fringe benefits, has said, "whether the attorney is paid for his services by the corporation, whether the work for the individual is included in his general corporate retainer, or whether he is paid at all, is unimportant. The fact is that the services, in such cases, are rendered because of the attorney's employment by the corporation, and the vice is that there is a divided allegiance." American Bar Association, *Informative Opinion of the Committee on Unauthorized Practice of the Law*, 36 A. B. A. J. 677, 678 (1950). Other vague horrors have been imagined: "What is the position of the union member using the union lawyer, or of the employee using the employer-furnished lawyer, if he should become involved in a scandalous matrimonial situation . . . from which the organization's lawyer must learn of reprehensible traits or conduct . . . ? And what is the position of the group-supplied law-

yer?" Reisler, *Legal Services for All—Are New Approaches Needed?*, 39 N. Y. S. B. J. 204, 208 (1967).

Against these speculations might be measured the equally plausible conflicts of interest inherent in present methods of representation. A contingent fee lawyer, for example, might be under enormous pressure to settle a case for nine hundred dollars, if it would take only an hour to reach such a settlement, rather than spend several days litigating it although his client is likely to be awarded twice that amount. Such a lawyer would perhaps press his client, against his best interests, to accept such a settlement.

In a leading article, Zimroth has pointed out that all such speculation contradicts the normal assumptions which must be made about the legal profession. We do not assume that a lawyer defending an antitrust case for a small client will sacrifice his clients' interests to those of other, larger clients who may want a contrary precedent. Nor do we assume that he will allow his personal desires or associations, or the causes he espouses, or the desires of other members of his partnership, to interfere with his service to his client. When abuse does take place, it will not be hard to detect, for dissatisfied clients will complain. Zimroth, *Group Legal Services and the Constitution*, 76 YALE L.J. 966, 977 (1967).

The appropriate adjustment between state interests and constitutional rights is to permit the state to punish a practice only upon a showing that the practice has resulted in actual harm to a client or some other person, or to restrain a practice only upon a showing of manifest danger, and then only by a regulation narrowly directed at the threatened harm. Thus, Illinois could constitutionally pro-

hibit a salaried union attorney from representing both plaintiff and defendant where both were members of District 12, and could require the union in that case to retain outside counsel. But Illinois may not prohibit group services entirely just because cases of real conflict may be imagined. As shown above, this rule of requiring prohibitions which may infringe upon constitutional rights to be narrowly focused is the rule traditionally applied by the Court in both First Amendment and due process cases.

Neither the contingent fee bar nor any other segment of the legal profession need fear from our suggested disposition. Possibly the widespread existence of group services will require contingent rates to become lower and therefore more competitive with other forms of service, but this may well be made up for by an aggregate increase in effective demand for lawyers. The advent of group medical service, medical insurance, and Medicare raised the income of doctors by raising demand closer to the level of community need, and all available evidence suggests that this phenomenon will apply also to law. In fact, "in California's Alameda County where a pioneer OEO program has been operating for over a year and a half, the number of referrals to the County Bar Association Referral Service quadrupled. And in New Haven [contrary to the fears of members of the County Bar Association], the County Bar Association reported that referrals have increased threefold since 1963." OFFICE OF ECONOMIC OPPORTUNITY, FIRST ANNUAL REPORT OF THE LEGAL SERVICES PROGRAM TO THE AMERICAN BAR ASSOCIATION 9 (1966). Far from damaging the profession, constitutional protection for the fledgling legal services revolution will aid significantly fulfillment by lawyers of their promise and their duty to the American public.

CONCLUSION

The traditional lawyer-client relationship has proven inadequate to meet contemporary needs for legal service. Diversity and experimentation in the provision of legal assistance must be ensured so that Americans may enjoy in reality the rights which are in theory theirs. Rules of ethics have a place in preventing abuses, but should not be allowed to impede unduly the development of new ways of providing and paying for legal service; broad and vague rules cannot constitutionally be applied merely because potential harm to potential clients can be hypothesized. For the foregoing reasons, we submit that the judgment below should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 33

UNITED MINE WORKERS, DISTRICT 12,

Petitioner,

—v.—

ILLINOIS STATE BAR ASSOCIATION; *et al.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Motion for Leave to Participate in Oral Argument

The NAACP Legal Defense and Educational Fund, Inc., and the National Office for the Rights of the Indigent, respectfully move the Court for permission to participate in oral argument. Movants recognize that such permission is granted only rarely; we submit, however, that this is an extraordinary situation.

Although decisions of this Court typically have widespread effects, affecting rights of thousands of persons not parties to the case decided by the Court, this case has even broader ramifications. As a committee of the American Bar Association has noted, "this case above all holds the key to how, and in what manner, attorneys are to

practice law in contemporary times" (brief, p. 34). If the Court accepts our suggested disposition of the merits, its decision will ensure that the legal services revolution will continue to flourish, so that for the first time, all Americans will be able to enjoy the rights to which they are entitled. The right to have rights is itself affected.

No *amicus* can truly speak for all the millions of persons in need of legal services. But our unvarying objective has been to extend legal services to those in need, and we feel that we can help inform the Court about that need and the ways in which it might be satisfied.

WHEREFORE, movants respectfully request permission to participate in oral argument.

Respectfully submitted,

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1967

NO. 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12
Petitioner

v.

ILLINOIS STATE BAR ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF ILLINOIS

MOTION FOR LEAVE TO FILE A BRIEF AS
AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) hereby respectfully moves for leave to file a brief *amicus curiae* in the instant case in support of the position of the petitioner, as provided for in Rule 42 of the Rules of this Court. The consent of counsel for the petitioner has been obtained. Counsel for respondent has refused his consent.

INTEREST OF THE AFL-CIO

The AFL-CIO is a federation of one hundred twenty-nine affiliated labor organizations with a total membership of approximately thirteen million five hundred thousand. The question presented by the instant case is whether union members may further their undoubted constitutional right to associate for the purpose of preserving and enforcing their legal rights, *Brotherhood of Railroad Trainmen v*

Virginia, 377 U. S. 1 (1964), by voting to set up a plan whereby funds in the union treasury may be used to pay an attorney to advise and represent such of their number as need his services. As this case and the *Trainmen's Case* both indicate, union members, affiliated with every segment of the labor movement, have traditionally been anxious to utilize their labor organizations as a base upon which to build improved methods of obtaining legal services, see, e.g., *Committee Report on Group Legal Services*, 39 Cal. S.B.J. 639, 670-675 (1964) (survey of union legal assistance plans in California); New York Times, April 10, 1965, p. 31, col. 2 (discussion of legal aid clinic established by the New York Hotel Trades Council). Moreover, as both these cases also indicate, these efforts have met widespread resistance from both State Bar Associations and the American Bar Association, see the Petition for Rehearing in the *Trainmen's Case* filed by the ABA and 44 State Bar Associations. The Bar's efforts have naturally tended to limit the effectiveness and the growth of these union group legal service programs.

The AFL-CIO, as spokesman for the majority of American union members has a profound interest in seeing that the arbitrary and unwise restriction on the access of working men to effective counsel sought by the Bar and granted by the court below is set aside. For this reason it seeks leave to file a brief as *amicus curiae* in order to acquaint the Court with the views of the labor movement as a whole as to why the decision of the court below should be reversed.

ISSUE NOT COVERED IN THE PETITION

The main portion of the petitioner's brief in the instant case is devoted to demonstrating that the Illinois Supreme Court's determination of the constitutional question presented is erroneous and in conflict with this Court's decisions in the *Trainmen's Case*, and *N.A.A.C.P. v Button*, 371 U.S. 415 (1963). It deals only in passing with the seri-

ous consequences that the decision below will have on workers' ability to secure truly adequate legal representation. We believe that recent legal and sociological commentary demonstrates beyond any reasonable doubt that the decision below will have an extremely deleterious effect on their ability to do so, and that it will be helpful to the Court to have the reasons for this belief developed. The accompanying brief *amicus curiae* is therefore primarily addressed to that task.

CONCLUSION

For the above stated reasons we respectfully urge the Court to grant this motion for leave to file the accompanying brief *amicus curiae* in the instant case in support of the position of the petitioner, just as it granted the AFL-CIO's motion for leave to file a brief as *amicus curiae* in support of the petition for a writ of *certiorari*, 386 U.S. 941 (1967).

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August 1967



IN THE
Supreme Court of the United States
OCTOBER TERM, 1967

NO. 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12
Petitioner

v.

ILLINOIS STATE BAR ASSOCIATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR THE
AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
AS AMICUS CURIAE

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), contingent upon the Court's granting the foregoing motion for leave to file a brief as *amicus curiae*.

The opinion below, jurisdiction, questions presented, constitutional and statutory provisions, and canons of ethics involved are set out in Appendix A, pp. 1a-2a, to petitioner's brief.

The interest of the AFL-CIO is set out on pp. iii-iv of the foregoing motion for leave to file a brief as *amicus curiae*.

ARGUMENT

PETITIONER'S GROUP LEGAL SERVICE PLAN IS PROTECTED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

1. In 1963 this Court found that a group legal service plan¹ instituted by the National Association for the Advancement of Colored People (N.A.A.C.P.) was entitled to the protection of the First and Fourteenth Amendments to the Constitution of the United States, *N.A.A.C.P. v Button*, 371 U.S. 415 (1963). That plan had as its principal aim the "financing [of] litigation aimed at ending racial segregation in the public schools," 371 U.S. at 420. In other words, at the time it was reviewed by this Court, the plan's principal aim was to insure that the rule of law announced in *Brown v Board of Education*, 347 U.S. 483 (1954) became a living reality. The plan's lawyers were elected at the organization's convention and were compensated for their work on a per diem basis by the N.A.A.C.P., which was their sole source of remuneration for working on a case, 371 U.S. at 420. If potential clients came to the N.A.A.C.P., the chairman of the legal staff and the President of the local N.A.A.C.P. Conference would decide whether legal assistance should be given, *Id.* at 421. In addition, at the initiative of local N.A.A.C.P. branches, members of the legal staff would speak to local meetings about the legal steps needed to bring about desegregation. They carried with them printed forms for authorizing the N.A.A.C.P. to represent

¹ Group legal service plans have been defined as plans in which "Legal services [are] performed by an attorney for a group of individuals who have a common problem or problems, or who have joined together as a means of best bargaining for a predetermined position, or who have voluntarily formed, or become members of an association with the aim that such association shall perform a service to its members in a particular field or activity, or through common interests it appears that the organization can gain a benefit to the members as a whole." *Committee Report on Group Legal Services*, 39 Cal. S.B.J. 639, 661 (1964).

the signees in legal proceedings to achieve that end, *Ibid.* The N.A.A.C.P. set down basic guidelines relating to litigation: for example, that suits seeking separate but equal facilities would not be accepted; but otherwise "the actual conduct of assisted litigation [was] under the control of the attorney," *Id.* at 420-421.

In 1964 this Court, explicitly following and relying on *Button*, held that a group legal service plan instituted by the Brotherhood of Railroad Trainmen, AFL-CIO, was likewise entitled to the protection of the First and Fourteenth Amendments, *Brotherhood of Railroad Trainmen v Virginia*, 377 U.S. 1 (1964). The Trainmen and the other railroad brotherhoods had supported passage of the Federal Employee's Liability Act, 45 U.S.C. Sec. 51-60, and the Trainmen set up a Legal Aid Department to insure that the benefits of that law would not be eroded by "claims adjusters eager to gain a quick and cheap settlement" or by "lawyers either not competent to try these lawsuits . . . or too willing to settle a case for a quick dollar," 377 U.S. at 3-4. Under the plan the Trainmen, through the secretary of the union's local lodge, advised each injured member not to settle his case "without first seeing a lawyer, and that in the Brotherhood's judgment the best lawyer to consult was the counsel selected by it for that area," *Id.* at 4. The union also provided an investigatory staff at its own expense, *Id.* at 4, n. 8. Moreover, because many members followed the union's advice, the lawyers it recommended were often able to accept a lower fee than was normally charged in the area for handling accident claims, *Bodle, Group Legal Services: The Case for BRT*, 12 U.C.L.A. L.Rev. 306, 311-312 (1965).

In 1966, in the instant case, the Supreme Court of the State of Illinois refused to follow the teaching of *Button*, and the *Trainmen's Case*, and held that a group legal service plan instituted by the United Mine Workers, District 12, a labor union, was not entitled to the protection of the

First and Fourteenth Amendments (R. 94-105).² In 1913 the District 12 Convention had established a legal department to deal with the problems of members injured while at work since their "interests were being juggled and even where not, they were required to pay forty to fifty percent of the amounts recovered in damage suits for attorney's fees" (R. 14). Under this plan a licensed attorney is retained by the Executive Board to represent those of the members who need and desire his services in relation to workmen's compensation matters (R. 17, 31). The members are advised that an attorney is available to handle their claims (R. 15). The attorney's sole compensation for his services is an annual salary plus actual hotel and transportation expenses and secretarial assistance (R. 14-15, 19-20). Any recovery secured goes to the injured worker in its entirety (R. 16, 46). Members are free, without fear of union discipline, to by-pass the plan and secure an outside attorney (R. 14, 19-20). The attorney and the injured members he represents have sole control of the litigation, including the decision whether to settle short of trial. District 12 has made it clear that as to these matters the attorney would not receive "instructions or direction and [would] have no interference from the District, nor from any officer, and your obligation and status will be to and with only the several persons you represent." (R. 20, 45)

2. We submit that District 12's group legal service plan is constitutionally protected in all respects under the principles laid down in *Button* and the *Trainmen's Case*.

The basic rule is set out in *Button*, 371 U.S. at 428, 429, 430:

"... petitioner claims that the [Virginia law] infringes the right of the NAACP and its members and lawyers to associate for the purpose of assisting persons who seek legal redress for infringe-

² "R" references are to the record as printed for this Court.

ments of their constitutionally guaranteed and other rights...."

"... abstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion. . . . In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression. . . ."

"We need not, in order to find constitutional protection for the kind of cooperative, organizational activity disclosed by this record, whereby Negroes seek through lawful means to achieve legitimate political ends, subsume such activity under a narrow, literal conception of freedom of speech, petition or assembly. For there is no longer any doubt that the First and Fourteenth Amendments protect certain forms of orderly group activity. . . ." (emphasis added)

This Court has made it perfectly clear that this protection is not limited to political expression in any narrow sense of that term, and that it includes group legal action taken to secure or effectuate legal rights of a non-constitutional dimension which are of value to the entire group. In the *Trainmen's Case* it stated, 377 U.S. at 7, 8:

"A State could not, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest. Laymen cannot be expected to know how to protect their rights when dealing with practices and carefully counseled adversaries, cf. *Gideon v Wain-*

wright, 372 US 335. . . . and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics. . . ."

"Only last term we had occasion to consider an earlier attempt by Virginia to enjoin the National Association for the Advancement of Colored People from advising prospective litigants to seek the assistance of particular attorneys. In fact, in that case, unlike this one, the attorneys were actually employed by the association which recommended them, and recommendations were made even to nonmembers. *NAACP v Button*, supra. . . ."

"... The Brotherhood's activities fall just as clearly within the protection of the First Amendment. *And the Constitution protects the associational rights of the members of the union precisely as it does those of the NAACP.*" (emphasis added)³

We do not see how any other conclusion could have been reached. Litigation by the N.A.A.C.P. to secure the abolition of legal rules mandating segregation of the races in schools is clearly a form of political expression. It is just as clear, as the Court recognized in *Button*, that litigation designed to implement that goal, after it has become the law of the land—in other words to insure that the law is an operative reality and not a dead letter—is a form of political expression. Great moral causes, however, are not the limits of politics. Politics in its most normal sense concerns rules which govern the allocation of the society's re-

³ Indeed, the Court, in the *Trainmen's Case*, 377 U.S. at 7, in language which should have guided the court below, since it precisely governs the situation presented in the instant case, added:

"... It is interesting to note that in Great Britain unions do not simply recommend lawyers to members in need of advice; they retain counsel, paid by the union, to represent members in personal lawsuits, a practice similar to that which we upheld in *NAACP v. Button*, supra."

sources between contending parties. Viewed properly the question of whether the burden of supporting an injured workman should fall on the workman, in some or all instances, or on his employer, or on society generally is a political question, *see generally* S. Horowitz, *Workmen's Compensation* 2-10 (1946). Thus group action of a peaceful nature to convince the general public, the federal or state legislatures, or the federal or state courts that a system following the principles of a workman's compensation plan rather than the common law of torts should be the basis for settling this question is a form of political expression, *cf.*, *Eastern R.R. Conference v Noerr Motor Freight*, 365 U.S. 127, 137-138 (1961). Equally, as the *Trainmen's Case* recognizes, once the basic struggle has been successfully waged, peaceful group efforts to insure that the victory is not a promise to the ear broken to the hope is also a form of political expression. *See* P. Zimroth, *Group Legal Services and the Constitution*, 76 Yale L.J. 966, 987-991 (1967).

Naturally this does not mean that a scheme under which a private promoter offers workers legal assistance in workmen's compensation matters at a five percent contingent fee for himself and a ten percent fee for the lawyer involved, in an area where the standard fee is thirty percent, is protected by the First and Fourteenth Amendments. For it is well settled that they do not protect commercial activities as such, *e.g.*, *Valentine v Chrestensen*, 316 U.S. 52 (1942). But it should and does mean that group legal action by the workers themselves, in situations where the interests of the group and the individuals who comprise it coincide, and where the group has no monetary stake in the litigation, is protected. The touchstone is the purpose of the plan in light of the over-all objectives of its sponsors, *Button*, 371 U.S. at 429.

3. Since it is manifest that associational activity subject to the protection of the First and Fourteenth Amendments

is involved here, the burden of proof that must be carried in order to uphold the decision below is a heavy one. The State must advance a "substantial regulatory interest, in the form of substantive evils flowing from the [interdicted] activities which can justify the broad prohibitions which it has imposed," *Id.* at 444. A showing that the state's action found its roots in the power to regulate the legal profession is insufficient, for "a State cannot foreclose the exercise of constitutional rights by mere labels," *Id.* at 429. Therefore, state action restricting the use of group legal service plans must be justified by proof tending to show that the practice which is enjoined is an "oppressive, malicious or avaricious use of the legal process for purely private gain," *Id.* at 443, or a "commercialization of the legal profession which might threaten the moral and ethical fabric of the administration of justice," *Trainmen's Case*, 377 U.S. at 6. Moreover, this Court's decision in *Button*, 371 U.S. at 441-443, indicates that this burden of proof is not met if all that is shown is that the associational activity in question takes a form in which the beneficiaries of the plan may be said to be acting through a lay intermediary:

"Objection to the intervention of a lay intermediary, who may control litigation or otherwise interfere with the rendering of legal services in a confidential relationship, also derives from the element of pecuniary gain. Fearful of dangers thought to arise from that element, the courts of several states have sustained regulations aimed at these activities. We intimate no view one way or the other as to the merits of those decisions with respect to the particular arrangements against which they are directed. It is enough that the superficial resemblance in form between those arrangements and that at bar cannot obscure the vital fact that here the entire arrangement employs constitutionally privileged means of expression to secure constitutionally guaranteed civil rights. There has been no showing of a serious danger here

of professionally reprehensible conflicts of interest which rules against solicitation frequently seek to prevent. This is so partly because no monetary stakes are involved, and so there is no danger that the attorney will desert or subvert the paramount interests of his client to enrich himself or an outside sponsor. And the aims and interests of NAACP have not been shown to conflict with those of its members and nonmember Negro litigants; compare *National Asso. for Advancement of Colored People v Alabama*, 347 US 449, 459. . . . '[the NAACP] and its members are in every practical sense identical. The Association . . . is but the medium through which its individual members seek to make more effective the expression of their own views'."

In the instant case the heavy burden of proof necessary to sustain the restrictive ruling of the court below has not, and could not, be carried.

The strength of the case for group legal service plans which embody a cost spreading principle appears to us to be overwhelming. First, it is now beyond dispute, by reason of the work of distinguished scholars over the past thirty years that in our rapidly changing complex, interdependent urban society, working men and their families are encountering an ever wider variety of problems which the general polity has dealt with through formal regulation and which may therefore appropriately be denominated as "legal problems"; and that because of the present structure of the American Bar, as governed by the prevailing canons and rules, in many cases the average worker is not being apprised of his legal rights in such fields as landlord and tenant, consumer credit and family law, as well as workmen's compensation, and is not being afforded an adequate opportunity to secure the services of a lawyer in whom he has confidence and who is competent to meet his particu-

lar needs at a price he can afford to pay.⁴ See, e.g., M. Schwartz, *Foreword: Group Legal Services in Perspective*, 12 U.C.L.A. L. Rev. 279, 286-295 (1965); J. Carlin and J. Howard, *Legal Representation and Class Justice*, 12 U.C.L.A. L. Rev. 381, 386-423 (1965), (collecting and analyzing earlier authorities); *Committee Report on Group Legal Services*, 39 Cal. S. B.J. 639, 652-660 (1964), (collecting and analyzing earlier authorities); E. Cheatham, *A Lawyer When Needed: Legal Services for the Middle Classes*, 63 Colum. L. Rev. 973 (1963); E. Koos, *The Family and the Law* (1949); Iowa State Bar Association, *Lay Opinion of Iowa Lawyers* (1949); C. Clark and E. Corstvet, *The Lawyer and the Public: An A. A. L. S. Survey*, 47 Yale L.J. 1272 (1938); K. Llewellyn, *The Bar's Troubles, and Politics—And Cures?*, 5 Law and Contemp. Prob. 104 (1938).

As the *Committee Report on Group Legal Services*, *supra*, 39 Cal. S. B.J. at 652, 659 stated, after analyzing the relevant data:

"We are persuaded that there is an unfilled public need for legal services; that the public from time to time is confronted with problems for which legal assistance would be on any standard highly desirable but where legal assistance is not obtained."

"Three indices tend to confirm that the public is not presently being adequately serviced by the legal profession. The growth of unauthorized practice (lay competition) has been a response to a growing need for legal assistance; a need not being met by lawyers. Specialization has been mentioned as a partial remedy but, . . . the bar has been reluctant to accept the stringent safeguards in a certification system that must be innovated in order to make specialization an effective device. Prior sur-

⁴ For a discussion pinpointing some of the weaknesses in the present system, by the then chairman of the American Bar Association's Committee on Evaluation of Ethical Standards, see E. Wright, *An Evaluation of the Canons of Professional Ethics*, 21 The Record 581 (1966).

veys of the public have reported a substantial need for legal services."

Even the organized Bar, which has fought the establishment of group legal service plans, shows signs of recognizing the magnitude of the problem. Thus ABA President Orison S. Marden, in his annual report on the progress of the organized Bar, admitted "We have not yet devised satisfactory plans for serving the great mass of middle income citizens for whom legal services do not appear to be readily available today." *Washington Post*, August 8, 1967, p. 6, col. 6.

Second, and of equal importance, as far as the problem presented here is concerned, there is growing recognition that well-to-do individuals, and institutions such as the government and corporations, receive a qualitatively different kind of legal service than the average working man. Messrs. Carlin and Howard of the Center for the Study of Law and Society of the University of California, Berkeley, state:

"Lawyers representing lower-class persons tend to be the least competent members of the bar, and those least likely to employ a high level or wide range of technical skills."

"In the highly stratified professional community of the metropolitan bar, for example, the large firms serving wealthy individuals and large corporations claim a lion's share of the best legal talent. . . ."

"Lawyers available to lower-class clients are not only less competent, but whatever legal talents they have are less likely to be employed in handling matters for their poorer clients. In part this is a direct consequence of the fee. Thus, Hubert O'Gorman [*Lawyers and Matrimonial Cases* 61 (1963)] reports that among matrimonial lawyers in New York City (practically all of whom are individual practitioners or in small firms) the size of the fee

has considerable impact on the quality of service provided. Not only is the amount of time spent on legal research 'conditioned by the anticipated compensation,' but fees may also 'dictate the strategy and tactics employed in legal representation'."

"The quality of service rendered poorer clients is also affected by the non-repeating character of the matters they typically bring to lawyers (such as divorce, criminal, personal injury): this combined with the small fees encourages a mass processing of cases. . . . Moreover, there is ordinarily no desire to go much beyond the case as the client presents it, and such cases are only accepted when there is a clear-cut cause of action. . . ."

"A final significant fact about quality of representation is that lower-class clients are most likely to be provided with remedial service only. If a poor person gets to a lawyer it is generally after the fact—after he has been arrested, after his wages have been garnished, or after his property has been repossessed.

"... In [contrast in] representing [well-to-do] clients lawyers provide a much wider range of services and they are of a more continuous and preventive nature. Such services include: (1) planning and setting up legal arrangements by establishing contractual relationships to effectuate the client's wishes and to insure certain legal advantages, and (2) clarifying and fashioning the law to provide maximum protection of the client's interests by means of lobbying in legislative and administrative agencies, and by presenting carefully worked out legal arguments before various official bodies, including appellate tribunals." Carlin and Howard, *supra*, 12 U.C.L.A. L. Rev. at 384-385 (footnotes omitted.)

Third, the scholars who have studied the problem are in general agreement as to the causes of the comparatively inadequate representation available to the typical working

man. See authorities cited on p. 10, *supra*. These causes have been succinctly summarized by the former Solicitor General, Professor Archibald Cox:

"... [T]he unfilled need for legal services would seem to center about two difficulties which it may be impossible to overcome without changes in the organization, or structure, of the legal profession and, incidentally, in some of the canons of ethics."

"The first difficulty is the inability of individuals to meet the high cost of the legal services that they occasionally require. It is not that fees are too high. Rendering skilled advice requires time and training that deserve adequate compensation. The cost of maintaining law offices is constantly rising. Litigation, especially where investigatory work is necessary, is expensive at best. Paying even modest legal fees puts an almost unbearable burden not only upon the poverty-stricken who obviously cannot bear the cost but also upon millions in low and middle income groups, unless the case happens to be one in which the potential recovery is large enough to merit a contingent fee. With the low and middle income groups the financial problem is not much different from that of hospital or surgical costs, which overwhelmed family after family before the days of group insurance; the need arises suddenly, the cost is disproportionate to income and no savings have been accumulated against the contingency. This economic segment of society taken as a class, however, can afford to, and should therefore, pay for legal services if some way can be found of spreading and sharing the costs. Indeed, the devising of acceptable methods would seem to offer many advantages for the profession."

"Second, and possibly more important, is the problem of ignorance. The ignorance is of two kinds; first, ignorance of the possibility that legal advice might be helpful and legal remedies may be available; second, distrust of strange lawyers and ignorance as to whether and where reliable legal services can be obtained either without cost or within

the limited ability to pay. . .," A. Cox, *Poverty and the Legal Profession*, 54 Ill. B.J. 12, 14-15 (1965).

Fourth, there is a consensus among independent scholars who have studied this problem that group service plans tend to remove the barriers to adequate legal representation noted by Professor Cox. As Professor Murray A. Schwartz, of the U.C.L.A. Law School, and a member of the Group Legal Service Committee of the California State Bar, has noted:

"These group plans tend to perform at least one of three separate functions which can be characterized as public awareness, contacting and economic."

"The *public awareness* function is the utilization of the group to apprise the members of their legal rights and of the general availability of lawyers to vindicate those rights. . . ."

"The *contacting* function is the bringing together of the client and a particular lawyer. . . ."

"The *economic* function relates to the pricing of legal services. A group may affect the price of legal services which any one client pays in two ways. The first is by adoption of an insurance principle, spreading the cost over a large number of potential clients (i.e. the members of the group), so that the financial burden of the individual legal service which might otherwise fall on one member is borne by all. All members of the group who are equally likely to be subject to the cost, but those who do not happen to be will, nonetheless, share it. The second way is by increasing the volume of particular kinds of legal services so as to render the handling of any one instance more efficient and thus less costly," Schwartz, *supra*, 12 U.C.L.A. L. Rev. at 285-286.

Finally, there is no presently available operative alternative method, consistent with the Bar's canons of ethics as

presently interpreted, for assuring equal access to the courts to the average working man.⁵ The alternative most often mentioned by the Bar is the Lawyer Referral Service, see the Petition for Rehearing, filed by the ABA, pp. 6-7, 10, in the *Trainmen's Case*, but this program does not even purport to make available an insurance or cost-spreading principle. Moreover, the limitations of this service are suggested by the 1962 data as to the Bar's support of the plan, which indicates that only 16,000 of the 300,000 practicing lawyers in the country participated, Schwartz, *supra*, 12 U.C.L.A. L. Rev. at 288, and by the evidence which indicates that potential clients prefer the recommendations of organized groups to which they belong rather than relying on chance or the assistance of third parties with whom they are not familiar, *Committee Report on Group Legal Services, supra*, 39 Cal. S.B.J. at 665, 672. As Theodore Voorhees, Director of the National Legal Aid and Defender Association, and a former ABA officer, recently noted:

"Each referral service is now operated out of a single downtown office by the Bar Association. Usually the association 'neither vouches for the competency' of lawyers available 'nor for the quality of their services'. According to a report of an ABA Committee headed by Voorhees, 'the client finds himself in a grab bag with no guarantee—or even significant chance—of obtaining an attorney with any special training for his particular problem'." Washington Post, August 7, 1967, p. 1, col. 1, p. 11, col. 1.

The other logical alternative is prepaid legal insurance open to any one qualified to buy a policy. However, as the *Committee Report on Group Legal Services, supra*, 39 Cal. S.B.J. at 720 succinctly noted:

⁵ Government financing is a possible answer, but the funds presently committed to the pressing legal problems of the indigent are limited. We, therefore, exclude it as a possible solution here. See generally, *Neighborhood Law Offices: The New Wave in Legal Services*, 80 Harv. L. Rev. 805 (1967).

"... [T]hree articles are about the only written expressions in the area of prepaid legal insurance. Each article stresses how little is known of the need for such insurance. . . ."

"This Committee has actively debated and considered the subject of prepaid legal insurance. Actuarial studies are badly needed if any such insurance plans can be successful. Through its secretary and members, this Committee has corresponded with and spoken to many experts in the insurance and actuarial fields."

"The response of those in the insurance field was uniform; it was decidedly unenthusiastic. No insurance company has been found which was interested in either the development or sale of such a plan."

In light of the points just noted it appears absolutely clear to us that the Illinois Supreme Court's prohibition (R. 97-102) of group legal service plans set up by labor unions, which embody an insurance or cost-spreading principle, seriously undermines the efforts of working men to provide themselves with effective legal assistance. It destroys the major economic advantages of such plans by requiring each individual to meet the financial difficulties caused by a pressing legal problem entirely on his own. In many situations, as Prof. Cox points out, p. 13, *supra*, this means that the individual in question will be entirely barred from access to the courts. Moreover, it makes it extremely unlikely that the members of the group will benefit from preventive legal planning and long range attempts to influence the course of the law. On the other hand, these legal advantages are available to well-to-do individuals, and to institutions, since they are in a position to retain an attorney who they know has specialized competence in their area of interest, *see pp. 11-12, supra*.

In short the instant decision works a very substantial infringement on First and Fourteenth Amendment rights. Thus, as we have pointed out above, pp. 7-9 *supra*, the de-

cisions of this Court in *Button* and the *Trainmen's Case* require an affirmative showing of the "substantive evils flowing" from such plans. No such showing has been, or indeed can be, made here. The court below justified the infringement on personal rights which it mandated by arguing that group legal services constitute a possible threat to the attorney-client relationship brought about by potential conflicts between the individual member's interest and that of the group (R. 101-102). With all due respect, we submit that under this Court's decision in *Button* this argument is untenable.

First, as in *Button*, it seems extremely unlikely that there is any appreciable danger that an attorney employed by a union to handle workmen's compensation claims will attempt to sacrifice the interest of a voting member of the group to further that of the association. As to this matter, the interest of the individual and the group coincide. Neither the union nor the attorney has a financial stake in the individual lawsuits. Both have the sole interest of satisfying each individual member who uses the plan. For the members of the group will continue to assess themselves to pay his fee only if they are convinced that the attorney they employ has their individual interests at heart and that they will be well served by the plan when they make use of it. It is unlikely that they would vote to continue it if they had reason to believe that the personal interests of the individuals who support the plan, including themselves, were being submerged. Thus the fears voiced by the Illinois Supreme Court have been widely recognized to be unwarranted, e.g., H. Weihofen, *Practice of Law by Non-Pecuniary Corporations: A Social Utility*, 2 U. Chi. L. Rev. 119 (1934); *Practice of Law by Lay Organizations Providing the Services of Attorneys*, 72 Harv. L. Rev. 1334, 1344 (1959); *Group Legal Services*, 79 Harv. L. Rev. 416, 420

(1965). Zimroth, *supra*, 76 Yale L.J. at 977.⁶ Second, District 12 has taken extensive precautions to safeguard the attorney-client relationship and to insure that the individual member has control of his law suit. The Union has made it clear that it will not take part in litigation decisions. For this reason there was no record evidence tending to show that the interests of a single member had ever been sacrificed in the fifty years of experience under this plan. Significantly, the complainant here is the Illinois Bar Association, not a member of District 12. In the face of this record the unfounded suspicions of the court below are not a sufficient predicate for an infringement upon First and Fourteenth Amendment rights.

In essence, the Illinois Supreme Court concluded that personal payment of the attorney's fee by the client is the *sine qua non* of a proper and ethical attorney-client relationship. The fact that the court below excepted legal aid for indigents from the ambit of its ruling (R. 101-102) indicates the error inherent in this conclusion. For similar needs deserve similar responses, and the problems of the indigent and the average working man in securing assured access to the courts are, in fact, similar. Recognizing the validity of this point Theodore Voorhees, Director of the Legal Aid and Defender Association, has suggested extending legal aid to the millions "who can afford to pay fees but not very large ones." Citizens "of moderate means" outnumber the very poor by 2 to 1, Voorhees said, and "have legal prob-

⁶ Mr. Zimroth states:

"... Generally, we assume that a lawyer is an advocate, serving no interest but his client's. If a lawyer in a law firm is defending an antitrust suit for a small client, we do not normally suspect that he is subverting this client's interest in order to create a precedent favorable to the firm's bigger clients. If an independent lawyer is a member of SNCC, or believes in its goals, or perhaps even is paid to do some of its tax work, we do not think that in defending a Negro in an assigned criminal case he will press SNCC's favorite legal theories rather than the ones most beneficial to his client."

"So far, these assumptions about the lawyer's sense of responsibility have worked reasonably well. When they don't, dissatisfied clients may provide a means for detection. There is no reason to make different assumptions about lawyers working for group legal services...."

lems closely akin to the poor. They have domestic difficulties, landlord problems, consumer claims, and debts. They do not number lawyers among their acquaintances, do not know how to find them, and fear their charges." Washington Post, August 7, 1967, p. 1, col. 1. Indeed, as we have attempted to show, while the financial problems encountered by the average working man or an indigent seeking legal redress are similar, the solution to the former's problems may well be far simpler. Society must provide resources to the indigent; the worker on the other hand needs only the freedom to join with others in meeting common problems.

In summary, we submit that the reasoning of the decision below is flatly inconsistent with that of this Court's decisions in the *Trainmen's Case* and in *Button*. There is no logical train of thought to support the conclusion that District 12's plan gives group interests greater scope to prevail over individual interests than does the Trainmen's plan, nor is there a single meaningful distinction between this plan and the plan upheld in *Button*. Thus, the Illinois Supreme Court failed to give adequate weight to the fact that this Court had already considered possible conflicts between the individual and the group and found them insufficient to overcome the constitutional rights of workers "to associate together to help one another to preserve and enforce [their] rights . . .," *Trainmen's Case*, 377 U.S. at 7.

CONCLUSION

For the foregoing reasons, as well as those stated by the petitioner, the decision of the Supreme Court of the State of Illinois should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioners,
v.

ILLINOIS STATE BAR ASSOCIATION, AN ILLINOIS NOT
FOR PROFIT CORPORATION, CURTIS F. PRANGLEY,
BERNARD H. BERTRAND, WILLIAM FECHTIG, KOREAN
MOVSISIAN, HENRY W. PHILLIPS, WILLIAM C. NICOL,
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MARSHALL A. SUSLER, individually and as members
of the Committee on Unauthorized Practice of Law
of the Illinois State Bar Association,

Respondents.

On Writ of Certiorari to the
Supreme Court of the State of Illinois

**BRIEF OF PETITIONERS, UNITED MINE
WORKERS OF AMERICA, DISTRICT 12**

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OPINIONS BELOW

The opinion of the Supreme Court of the State of
Illinois¹ (R. 94-105)² is reported at 219 N.E. 2d 503 (1966).
No opinion was rendered by the trial court.

¹ Herein called "Illinois Supreme Court".

² The symbol "R." refers to the printed Transcript of Record.

JURISDICTION

The Illinois Supreme Court's judgment was entered May 23, 1966 (R. 106). A duly filed Petition for Rehearing was denied September 21, 1966 (R. 107-08). Petition for a writ of certiorari was filed December 20, 1966 and granted February 27, 1967 (R. 108). This Court has jurisdiction under 28 USC, Section 1257(3).

QUESTIONS PRESENTED

1. Does a state court decree conflict with rights guaranteed to coal miners, members of an unincorporated labor union, under the First and Fourteenth Amendments to the Constitution of the United States when it holds that such labor union engages in the unauthorized practice of law by employing a duly licensed practicing attorney on a salary basis, and paid by it from membership dues, to represent union members in the prosecution of claims before a state agency for benefits under a state workmen's compensation act where the injured members may, but are not required to, use such services?

2. Is there in this case a compelling state interest which warrants a limitation of such constitutional guarantees?

3. Does the state court decree violate the rights of such members to engage in concerted activities for the purpose of their mutual aid and protection under Section 7, Labor Management Relations Act, 1947?

4. Is there in the record any substantial evidence to sustain the restraining order and decree?

CONSTITUTIONAL AND STATUTORY PROVISIONS AND CANONS OF ETHICS INVOLVED

Pertinent constitutional provisions involved consist of the First and Fourteenth Amendments to the Constitution

of the United States. In addition, Section 7, Labor Management Relations Act, 1947, as amended (29 USC, Section 157 and herein called "Act"), and Canons 35 and 47, Canons of Ethics of the Illinois State Bar Association and Illinois Revised Stat. (1959), Ch. 48, Sec. 138.21, are involved.³

STATEMENT OF THE CASE

A. Pertinent Pleadings and the Federal Questions Raised.

Illinois State Bar Association, an Illinois corporation "not for profit", and certain of its members, individually and as its Committee on Unauthorized Practice of Law,⁴ complained in the Circuit Court of Sangamon County of that State⁵ that United Mine Workers of America, District 12 (called "United Mine Workers"),⁶ which cannot be licensed to practice law, has been engaged in Sangamon and other Illinois counties "in that in the course of providing services for members it has, and still does, employ an attorney on a salary basis" to represent its members "with respect to claims they may have under the" State's Workmen's Compensation Act and thereby has "offered, furnished, and rendered legal services and advice" (R. 1-3). The Bar Association charged such activities to be in contravention of their rights as attorneys at law, public policy and Illinois laws, tends to "degrade the legal profession", "to bring the same into bad repute in the administration of justice", and "to mislead and defraud the public" (R. 3).

³Provisions of the foregoing constitutional amendments, federal and Illinois statutes and Canons 35 and 47 are set forth in Appendix A hereto.

⁴Collectively called "Bar Association".

⁵Herein called "trial court".

⁶In the trial court, initial and subsequent pleadings were by "Joseph Shannon, a member of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and all the members of said association made parties hereto by representation, by Edmund Burke, their attorney . . ." (R. 5, 7, 8-9, 11, 23). The Notice of Appeal was by "United Mine Workers of America, District 12, Defendants-Appellants" (R. 26).

An answer filed by Joseph Shannon, a member of District 12, and "all the members" thereof "made parties hereto by representation" by their attorney, conceded that "as an association they are not and cannot be licensed to practice law" in Illinois (R. 8) and denied "they have been for many years engaged in the practice of law" (R. 7) but agreed "they, severally and jointly, employ a competent attorney", a member of the Illinois State and the American Bar Associations, "on a salary basis for the sole purpose of representing them and their dependents before the Industrial Commission in cases of injury and death arising out of and in the course of their employment as coal mine employees, which they and each of them have a legal right to do" (R. 7). Except as above stated, the answer denied "they have offered, furnished, or rendered legal services and advice" (R. 8).'

United Mine Workers' Motion for Judgment on the Pleadings (R. 8-10) having been rejected (R. 10), in a Motion for Re-consideration thereof (R. 11), United Mine Workers asserted that "interferences by the State of Illinois, as prayed for by the Plaintiffs, with the employment by the Defendants of attorneys of their own choice to represent them and their dependents, in cases of injury and death arising out of and in the course of their employment, and under the Workmen's Compensation Act, would violate . . . the rights guaranteed them by the First and Fourteenth Amendments to the Constitution of the United States" (R. 11). Upon the trial court's denial thereof (R. 12), the same grounds were asserted in a Motion for Summary Decree filed by all members of District 12 "by Representation, By . . . Their Attorney" (R. 23-24). The Summary Judgment Motion was denied

A motion to strike certain allegations and for judgment on the pleadings, filed by United Mine Workers, was rejected by the trial court, as was their motion for reconsideration (R. 8-10).

(R. 24-25), the trial court concluding that "as a matter of law the defendants have been and are engaging in the unauthorized practice of law by retaining an attorney (Stuart Traynor, Esq.) on a salary basis to represent their members with respect to claims that they may have under the provisions of the Workmen's Compensation Act of the State of Illinois." The trial court issued its injunction, discussed *post*, pp. 9-10.

Upon United Mine Workers' appeal to the Illinois Supreme Court (R. 26), the grounds were reasserted (R. 28-29) and United Mine Workers contended the injunction also violated their rights accorded by Section 7, Labor Management Relations Act, 1947 (R. 28).

B. The Facts⁶

More than fifty years ago, to-wit, on February 18, 1913, delegates elected by the members in each of their local Unions to the twenty-fourth annual convention of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union composed of workers employed in and around coal mines in Illinois (R. 14), convened at Peoria in that State and avowed that establishment of a legal department had become an actual necessity and authorized and directed their District Executive Board to establish a legal department to take care of the injury cases of United Mine Workers because "the interests of the members were being juggled and even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees" (R. 14). It was recommended at that convention that "*such establishment should not mean that*

⁶The facts, which concededly are not in dispute (R. 63), are established by admissions in the pleadings, by Answers to Interrogatories (R. 12-17, 55-62), and by depositions (R. 17-20, 31-54).

members be required to accept its counsel if they desired the services of others" (R. 14).⁹

As the Illinois Supreme Court's opinion recites (R. 95), "For many years, the Mine Workers, a voluntary association, has employed a licensed attorney on a salary basis to represent members and their dependents in connection with claims for personal injury and death under the Workmen's Compensation Act."

On August 5, 1963, a duly convened District 12 Executive Board, pursuant to the 1913 authority and directive, employed an attorney admitted to practice in state and federal courts in Illinois (R. 15, 31), a member of the Illinois State Bar Association and American Bar Association, on a salary basis, plus actual transportation and hotel expenses, to handle District 12 workmen's compensation cases (R. 14-15, 19-20).¹⁰ District 12's President, on September 26, 1963, by letter, advised the salaried attorney it would be his duty, with help of "secretaries in the Springfield and West Frankfort offices and officers of Local Unions", to see that "no member or dependent loses his rights under the Act by reason of failure to avail himself of them in time" and "to represent him before the Commission *if he desires your services*" but "*If he is represented by other counsel you will immediately turn over his file to such counsel*" (R. 19-20). The letter also made clear the attorney would "*receive no further instructions or directions and have no interference from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent*" (R. 20). Representation of employees before the Industrial Commission is the attorney's "total scope" of

⁹ All emphases herein are supplied.

¹⁰ In addition, the attorney is a State Senator in Illinois (R. 17, 31). His competency as an attorney is not questioned by the Bar Association or members of its Unauthorized Practice Committee.

employment for United Mine Workers (R. 17, 32). He is responsible to represent the employees "no matter how many may have claims during any particular year" and the "number of cases has nothing to do with" his salary (R. 18, 33); he advances no money on behalf of District 12 or the employees in connection with any hearing held (R. 18, 33); he is not required to do any work outside Illinois nor to do any type of work "other than the representation of" members injured with a claim under Illinois' Workmen's Compensation Act (R. 18, 33-34)." Dues are paid by the union members, no portion thereof being allocated to pay the attorney's salary (R. 15). Local union members and officers were informed by letter from the District President of the attorney's availability (R. 15). It is generally known among union members they have a lawyer available to them to present their claims to the Industrial Commission (R. 36-37).

The plan, as described by the current salaried attorney, operates as follows: Injured members are furnished forms by union employees entitled "Report to Attorney" on accidents which advise such injured members to fill out and send the forms to the Legal Department, District 12, United Mine Workers of America. When one of such forms is received by the legal department, the salaried attorney presumes it constitutes a request that he file with the Industrial Commission an application for adjustment of claim on behalf of the injured union member, although there is no language appearing on the form which specifically requests that the salaried attorney file such claim (R. 38-39). The application for adjustment of claim is prepared by secretaries in the union offices and when completed the attorney's name is signed by a sec-

"The sole exception, as the attorney related (R. 34), is "there might on some occasion be some kind of an incidental consultation that they might have with me just seeking advice of some kind".

retary authorized so to do and sent directly to the Industrial Commission (R. 36, 40). In most instances the salaried attorney has not seen or conferred with the injured member at the time the claim is filed with the Commission (R. 38, 40), although it is understood by the union membership that the attorney is available for conferences on certain days at particular locations and many claimants consult with him prior to the hearing (R. 43). Claimants are instructed by the attorney if they obtain medical assistance or reports arising therefrom "that it would be helpful to me in presenting" their cases to have "that made available to me" (R. 41). Generally an injured claimant has been examined by his employer's doctor, and the Compensation Act makes the medical report available to the attorney on request (R. 42). On occasion the attorney suggests the claimant seek other medical attention which the attorney feels would be helpful in developing the case or because it is felt the medical attention has been inadequate (R. 42). These determinations are made by the attorney (R. 42). Between the time the claim is filed and the hearing before the Commission, the salaried attorney prepares his case from his file and from examination of the application, usually without having a conference with the union member with regard to the latter's claim, although on occasions the attorney advises claimants as to the need for other medical attention (R. 42, 44). Ordinarily, the only thing an injured member receives concerning his claim is a notice to appear before the Industrial Commission, and while this may be the first time the attorney and the injured member come into contact with each other, this does not occur as to the "major number of persons" (R. 43-44). The attorney is always present when an injured claimant appears before an arbitrator (R. 43).

The attorney determines what he believes the claim is worth, presents his views to the attorney for the respondent coal company during prehearing negotiation, and attempts to reach a settlement (R. 44-45). If the coal company agrees with the Mine Workers' attorney, the latter recommends to the injured member that he accept such resolution of his claim. *Final determination is made by claimants* (R. 45). If a settlement is not reached, a hearing on the merits of the claim is held before the Industrial Commission (R. 45).

The full amount of the settlement or award is paid directly to the injured member (R. 16, 46). No deductions are taken therefrom, and the attorney receives no part thereof, his entire compensation being his annual salary paid by the union (R. 46, 62). Neither the District nor any officer receives any portion of the award (R. 16).

C. The Trial Court's Injunction Against United Mine Workers.

Whereas the trial court rejected United Mine Workers' motion for summary decree, it sustained the Bar Association's Motion for Summary Judgment (R. 24-25), finding and concluding in an Order entered September 7, 1965, "there is no genuine issue as to any material fact in this cause" and that "as a matter of law the defendants have been and are engaging in the unauthorized practice of law by retaining an attorney . . . on a salary basis to represent their members with respect to claims that they may have under the provisions of the Workmen's Compensation Act of the State of Illinois" (R. 24-25).

In its September 7, 1965 Order, the trial court also "permanently restrained and enjoined" the "defendants, United Mine Workers of America, District 12, its agents and employees" from (1) giving legal counsel and advice; (2) rendering legal opinions; (3) representing its mem-

bers with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois; (4) employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois; and (5) practicing law in any form either directly or indirectly (R. 25).

D. The Illinois Supreme Court Affirmed the Injunction by Final Judgment and Opinion.

The Illinois Supreme Court, by judgment entered May 23, 1966 (R. 106) for reasons disclosed in its Opinion (R. 94-105), affirmed the trial court; and, as noted, it rejected United Mine Workers' Petition for Rehearing by Order entered September 21, 1966 (R. 108).

Though conceding that voluntary associations, such as District 12, are not regarded as legal entities in Illinois (R. 97), the Illinois Supreme Court avowed that "this is not to say that such voluntary, unincorporated associations may not sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship" (R. 97). Pointing to its prior holdings that "organizations, including not-for-profit organizations, which hire or retain lawyers to represent their individual members in legal matters are ordinarily engaging in the unauthorized practice of law", its thesis therefor was that no relation of trust and confidence essential to the attorney-client relationship existed between the membership of those associations and their attorneys (R. 97) and that "Legal services cannot be capitalized for the profit of laymen, corporate or otherwise" and "should not be commercialized . . . as if that service were a commodity

which could be advertised, bought, sold and delivered" (R. 97-98).

The Illinois Supreme Court concedes "There can be no question of the hazards involved in coal mining", and that "undoubtedly the possibility exists that injured coal miners untutored in the intricacies of workmen's compensation law might accept wholly inadequate settlements" (R. 100). Though avowing that "Benefit to the miner, in that compensation of counsel under the plan here in effect is from the union treasury rather than the injured member or his family, is not to be easily disregarded", and that it is not denied "that the organization has an active interest in securing fair treatment for its members" (R. 100-01), the Illinois Supreme Court nonetheless regarded these factors as "insufficient to override the governing principles in the attorney-client relationship" (R. 101).

The Illinois Supreme Court regarded as "relevant" to its inquiry, the Bar Association's Canons 35 and 47 (R. 99), which were involved in this Court's *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 6, fn. 10, and which Canons, in substance, prohibit a lay intermediary from engaging in the law practice and forbid a lawyer's permitting his services or name to be used in aid of any such unauthorized practice of law. Canon 35 provides that "A lawyer's relation to his client should be personal, and the responsibility should be direct to the client" and it permits employment of attorneys by "an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested" but it excludes "legal services to the members of such an organization in respect to their individual affairs" (R. 100).

The Illinois Supreme Court condemned the legal aid plan of United Mine Workers because "*The lawyer is not paid for his services by the client; his salary is paid by the association*" (R. 101), and because (although there is no factual predicate therefor) "*the interests of the employer and the client*" and "*the interests of the union, collectively, may extend beyond the interest of the injured member*" (R. 101). These factors, it believed, "all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties" (R. 102). Thus, the Illinois Supreme Court concluded that "United Mine Workers, District 12, are engaging, under our decisions, in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" (R. 102).

To the United Mine Workers' claim that the trial court's decree violated their right to engage in concerted activities for the purpose of their mutual aid and protection under Section 7, Labor Management Relations Act, 1947 (29 USC 157), the Illinois Supreme Court argued that if the condemned conduct is not constitutionally protected, "it cannot seriously be argued" that the statute just adverted to "restricts the States from regulating the practice of law" (R. 102).

The Illinois Supreme Court rejected United Mine Workers' contention that the trial court's decree fell within the proscriptions enunciated by this Court's *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1, and *N.A.A.C.P. v. Button*, 371 U.S. 415. The *Trainmen's* "holding does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by

it to handle individual membership claims," argued that Court (R. 103), and therefore, it declared, "we do not read *Virginia Railroad Trainmen* as constitutionally protecting . . . employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission" (R. 103). Similarly, it rejected the applicability of *Button*, and though noting that therein attorneys furnished by N.A.A.C.P. "were apparently compensated on a *per diem* basis by the organization," (R. 103), the Illinois court undertook distinguishment by its statement that "the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot . . . be equated with the bodily injury litigation . . . concerned here" (R. 103), and by avowing that "Mine Workers may validly advise their members to seek legal advice in connection with these claims and may properly recommend particular attorneys deemed competent to handle such litigation" (R. 104).

The Illinois Supreme Court found constitutional infringement, if any, justified by the State's interest in controlling standards of professional conduct (R. 104). It declared, "The prohibition of payment by the organization" of the lawyer's compensation "may not be said to be direct suppression of the member's first amendment right to petition the courts"; and that there is no constitutional objection "unless it can be said that reduction in the net dollar amount remaining to him from the injury award after payment by the member of his attorney fees is a constitutionally impermissible impairment" (R. 104-5). Admitting this would be true in case of indigent claimants, the appellate court declared "the net effect upon the union member differs not at all from that upon other injured citizens" (R. 105).

As a further justification, not warranted by the facts, the Illinois Supreme Court *speculated* that "substantial commercialization of the law profession may follow" if the legal aid plan were allowed and that there may be an expansion of activity to encompass "legal problems involving domestic relations, contracts, criminal law and other areas of the legal field" and that "the integrity and personal nature of the attorney-client relationship would thus be substantially impaired, a result" the Court believed "contrary to the" public interest (R. 105).

SUMMARY OF ARGUMENT

I.

The Illinois Supreme Court's Opinion and Judgment violate the Federal Constitution's First and Fourteenth Amendments, as well as Section 7, Labor Management Relations Act, 1947.

This Court, in *Trainmen*, recognized that traditionally union members look to labor unions for help in problems associated with working conditions. With benefit scales under workmen's compensation statutes tailored to cover only minimum support of claimants during disability, payment of an attorney fee, even in successful prosecution of claims for benefits, thwarts the social objectives of compensation legislation. Illinois' compensation statute specifically provides against any lien upon an award of benefits, and this applies to attorney fees.

As the record herein shows, dissipation of workmen's compensation benefits through attorney fees and other attorney activities demonstrated to United Mine Workers the positive need for provision in advance for competent and loyal legal assistance in the event of disabling injury or death arising out of and in the course of employment

in the hazardous coal mining industry. It was natural that miners in Convention in 1913 should direct their District officers to establish a legal department. It was a proper joining of forces to accomplish a valid objective of mutual protection. The need to protect miners' legal rights at minimum cost is more crucial today than in 1913.

This Court's *Trainmen* avows that the First Amendment's "guarantees of free speech, petition and assembly give [in this instance, United Mine Workers] the right to gather together for the lawful purpose of helping one another in asserting" statutory rights. *Trainmen's* guidelines fit precisely what United Mine Workers did in establishing their legal aid program: "The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel" and "That is the role played by members who carry out the legal aid program". And, the Act's Section 7 expresses current national labor policy which accords to United Mine Workers the right "to engage in other concerted activities for the purpose of...other mutual aid or protection".

The Union's payment of the attorney's salary to handle workmen's compensation claims does not withdraw the plan from the constitutional protection recognized in *Button* and *Trainmen*. The Illinois Supreme Court's conclusion that United Mine Workers, District 12, "are engaging . . . in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" collides with *Trainmen's* holdings and rationale, and with the rights of coal miners under the Act's Section 7. Mere advice that an injured employee should procure legal services or even those of a particular attorney is "of

little avail if that person still faces an economic barrier" and, as *Trainmen* declares, "The right to petition the courts cannot be so handicapped."

The Illinois Supreme Court's condemnation of the plan of United Mine Workers of America ignores and evades this Court's crucial language in *Trainmen* which sanctions the precise activity herein involved and which reads (377 U.S. 7):

"It is interesting to note that in Great Britain unions do not simply recommend lawyers to members in need of advice; *they retain counsel, paid by the union, to represent members in personal lawsuits, a practice similar to that which we upheld in NAACP v. Button, supra.*"

Furthermore, the Illinois Supreme Court erroneously restricts this Court's *Button* to "constitutionally protected political expression". Error is manifested not only by the language above-quoted from *Trainmen* but also by the fact that the Question Presented in *Button's* certiorari petition included the element of the organization's defraying litigation costs and expenses. It is not a matter, United Mine Workers submit, of equating protected political expression "with bodily injury litigation", as the Illinois court avowed, but rather implementing that litigation in terms of the First Amendment's guarantees of free speech, petition and assembly under which United Mine Workers have the right to gather together to help and advise one another in asserting their legal rights under compensation statutes and to select a spokesman who could be expected to give the wisest counsel. As *Trainmen* recites, this may not be condemned as a threat to legal ethics.

To reach its conclusion, the Illinois Supreme Court discarded its long-followed doctrine that in Illinois a

voluntary unincorporated labor union has no existence apart from its members to declare that "such associations" may sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship. Yet, *Button* declared that the NAACP and its members are in every practical sense identical and that the aims and interests of the group association have not been shown to conflict with those of its members. *Button's* avowals are equally apposite herein.

The Illinois court's conclusion ignores that the attorney's employment is at the direction and behest of the coal miner members and as their bargaining agent. The Union is no more than the medium through which its individual injured members make effective their constitutional rights, as this Court indicated in *Button*. As the record shows herein, under the United Mine Workers' plan, the attorney receives no instructions or directions and has no interference from District 12 or any of its officers; the attorney's obligations and relations are to and with the several persons he represents; the attorney is available if, but only if, an injured employee desires his services and he is under orders to turn over his file to any other attorney of any member desiring another attorney to represent him. Representation of employees in their injury claims before the Industrial Commission is the "total scope" of the attorney's employment for United Mine Workers.

The Union's interest, as a service agency, in the welfare of its members, singly and collectively, does not cease when a member becomes injured. The Union's long struggle to provide security for employees and their families to enable them to meet problems arising, *inter alia*, from illness is recorded in this Court's *Lewis v.*

Benedict Coal Corp., 361 U.S. 459, and other federal authorities.

The Illinois Supreme Court's reliance upon an interpretation of Canons 35 and 47 collide with interpretations heretofore enunciated by the American Bar Association's Committee on Professional Ethics, which has declared there is nothing unethical in a union's agreeing to pay the legal expenses of a member so long as the attorney's selection is left to the member and he has no responsibility to the union. United Mine Workers' plan is totally consonant therewith. The Committee has also approved an attorney's employment and payment by an insurance company to defend an insured in an action by a third party without making any financial charge to the insured.

Both *Trainmen* and *Button* state positively that a state is forbidden by the Fourteenth Amendment from infringing upon First Amendment rights. Reversal is, therefore, appropriate.

II.

Contrary to the Illinois Supreme Court, there is no compelling state interest to warrant a limitation of Mine Workers' constitutional rights. The Court's judgment and opinion contravene Illinois public policy as expressed by the legislature in the workmen's compensation statute.

The Illinois court's belief that substantial commercialization of the law profession may follow if District 12 is permitted to employ an attorney for the discussed purposes is imaginary rather than real. Herein employee members seeking attorney's services pay nothing out of the awards; the attorney is forbidden to charge or receive any portion of the award. Neither the attorney nor the Union is financially enriched by reason of a larger volume of claims. With the Union's only interest being that an

injured member is adequately compensated, the conflict argument loses its vitality. As *Button* declares, the identity of interest between the Union and its members mitigates the possibility of conflict of interest.

On the other hand, there are compelling reasons why United Mine Workers would institute a group legal service plan. It apprises members of their legal right, brings union members in contact with a competent attorney, and makes legal services available in a manner compatible with Illinois public policy in relation to workmen's compensation cases.

If a labor union has, as *Trainmen* declares, a constitutionally protected right to assist its members in securing competent counsel to prosecute legal claims, such right necessarily must include the right of an unincorporated union to employ on a salaried basis an attorney to perform those services, thereby making the constitutional right a reality rather than merely theoretical.

The Illinois Supreme Court's Judgment and Opinion conflict with public policy as expressed by the legislature of that state in its workmen's compensation statute. A principal objective thereof sought to make certain that no one takes anything out of an award except the injured person or his dependent, if he is deceased, by providing that "No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages"; and this applies to an attorney's lien for fees before the Industrial Commission.

III.

The injunctive decree affirmed by the Illinois Supreme Court is without factual support. Even if the Illinois

courts were correct concerning the compensation work, which United Mine Workers deny, nothing sustains the full scope of the injunction. An injunction decree should conform to and be supported by proof, and should not be broader than the case warrants. Since the Illinois Supreme Court's conclusion that "United Mine Workers, District 12, are engaging, . . . in the unauthorized practice of law" was premised upon employment of a salaried attorney to represent individual members' claims before the Industrial Commission, the injunctive decree is far broader than the proof. Even if *Trainmen* and *Button* are inapplicable (which United Mine Workers deny), still the Illinois Supreme Court's affirmance of the trial court's injunction is offensive to those cases in that it violates and fails to provide for the permissive conduct affirmatively avowed by *Trainmen* and *Button*.

ARGUMENT

I. THE ILLINOIS SUPREME COURT'S OPINION AND JUDGMENT VIOLATE THE FIRST AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION, AS WELL AS SECTION 7, LABOR MANAGEMENT RELATIONS ACT, 1947.

A. Historically, Employees In Hazardous Industries Such As Coal Mining Have Utilized Unionism To Protect Them In Employment Problems.

Congress gave full expression to the right of employees to engage in concerted activities for mutual aid or protection first in Section 7 of the Wagner Act and later in Section 7 of the Labor Management Relations Act, 1947 (29 USC 157); but long prior to Congress' enunciation of this portion of national labor policy, this Court recognized the need for trade unionism when, in *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S. 184, 209, it stated that "Union was essential to give laborers opportunity to deal on equality with their employer".

Traditionally, union members have looked to their labor union for help in problems associated with their working conditions. *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1, 3, expressed this Court's belief that it was quite natural for railroad workers to combine their strength and efforts in the Railroad Brotherhoods to provide insurance and financial assistance to sick and injured members. So, in the coal mining industry, it is inconceivable that anything could be more intimately related to the aid and protection of men working in so hazardous an industry as coal mining,¹² with so high an incidence of injuries, as wise provision in advance for competent and loyal legal assistance in the event of disabling injury or death arising out of and in the course of their employment.

This Court's *Trainmen* records the concern which railroad employees experienced when it became apparent they would not "receive the full benefit of the compensatory damages" that federal statutes intended they should have, because, *inter alia*, of "lawyers either not competent to try these lawsuits . . . or too willing to settle a case for a quick dollar" (377 U.S. 3-4).

Coal miners' experience in Illinois, as the record reveals, was comparable. At common law an injured employee was discarded as an economic liability; but, through a system of workmen's compensation acts, which

¹²"Facts", 1966 Ed., published by National Safety Council, 425 N. Michigan Ave., Chicago, Illinois, at page 26, records that in 1965 the frequency rate of disabling injuries per 1,000,000 man-hours for all injuries was 6.53 for all industries, but 36.71 for underground coal mining and 8.71 for surface mining.

In Illinois, the trend of compensable work injury rates, based upon injuries reported per 1,000 workers, showed that coal mining in the 1945-64 period had the highest rate, and that in 1964 the compensable work injuries rate in the coal mining industry was 98 per 1,000 workers. Annual Report, "Compensable Work Injuries Reported", page A-4. Issued March, 1967 by Illinois Department of Labor. The same publication (p. 39) names bituminous coal mining as one of industries with a high rate of injury incidence.

have been described as "socializing risks", the burden of costs attending industrial injuries has been placed directly on an industry as an overhead operating cost.¹³ Cf. *Alaska Packers' Assn. v. Industrial Accident Commission, etc.*, 294 U.S. 532, 541. Intended as a more humane way of dealing with the staggering effects of industrial injury under common-law procedures, with its attendant delays, expenses and legal defenses, Illinois' first workmen's compensation act became effective May 1, 1912.¹⁴ Yet, the record herein discloses that delegates elected to District 12's Convention in 1913 declared the need of a legal department because "the interests of the members were being juggled and even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees" (R. 14). It was thus normal that this matter should become a compelling group interest, and not merely the personal problem of an injured miner. It was natural that miners in Convention should have sought relief in their labor union by directing District 12 officers to establish a legal department. As stated by Justice Carter in his dissent in *Hildebrand v. State of California*, 225 P.2d 508, 515 (Calif., 1950), a dissent referred to in this Court's *Trainmen* (377 U.S. 7, fn. 13), "It is nothing more than a proper joining of forces for the accomplishment of a proper legal objective of mutual protection." This accords clearly with Section 7 of the Act, which, as already noted, not only gives to employees the right to join and assist labor organizations and to bargain collectively through them, but also "to engage in other concerted activities for the purpose of . . . other mutual aid or protection . . ."

¹³Gregory, *Labor and the Law* (1946), p. 415.

¹⁴Katz and Wirpel, "Workmen's Compensation, 1910-1952: Are Present Benefits Adequate?", Vol. 4, *Labor Law Journal* (March, 1953), pp. 167, 168.

B. The Legal Aid Plan of United Mine Workers Is Consonant With the Philosophy of Workmen's Compensation Statutes.

Workmen's Compensation acts led the vanguard of social insurance in this country. The benefit scales were not, nor are they now, geared to a partial dissipation through the payment of lawyer fees. As shown elsewhere herein (pp. 36-37), the compensation statute in Illinois provides specifically against any lien upon a claimant's award of benefits. An eminent author of workmen's compensation laws states that "benefit scales are so tailored as to cover only the minimum support of the claimant during disability" and that when the practice of a claimant's having to pay an attorney even in the successful prosecution of his claim for compensation is superimposed upon a closely-calculated system of wage-loss benefits, a serious question arises whether the social objectives of workmen's compensation legislation is thwarted. *Larson's Workmen's Compensation Law*, Vol. 2, p. 345. Indeed, protection of coal miners' legal rights at a minimum cost is more important today than it was in 1913, since injury today in their employment impairs their source of economic sustenance even more than it did in 1913.¹⁵

¹⁵In Katz and Wirpel, "Workmen's Compensation, 1910-1952: Are Present Benefits Adequate?", Vol. 4, *Labor Law Journal* (March, 1953), pp. 167, 169, the authors considered what happened to benefit levels measured in real terms under workmen's compensation from the time of the original enactment in Illinois to 1952, and observed that for an injured worker with one child in Illinois, the ratio of weekly maximum benefits to average weekly earnings had declined from 98% in 1913-14 to 34% in 1952. For Illinois, in 1965 the ratio of maximum temporary total disability benefit for worker, wife and two dependent children to average weekly wage was 57.2%. Bulletin No. 212, Revised 1967, styled "State Workmen's Compensation Laws", U. S. Department of Labor, p. 34.

C. To Condemn the United Mine Workers' Legal Aid Plan, the Illinois Supreme Court Deviated From Its Traditional Holdings That Unincorporated Labor Unions Have No Existence Apart From Their Members.

Under well-established and long-followed doctrine in Illinois, a voluntary unincorporated labor union has no existence apart from its members.¹⁶ Indeed, the Illinois Supreme Court has professed "the question involved is one of substance . . . and not of procedure". *Montgomery-Ward & Co. v. Franklin Union Local No. 4*, 323 Ill. App. 590, 56 N.E. 2d 476, 477. Though conceding its adherence to such doctrine (219 N.E. 2d 505), the Illinois Supreme Court wittingly discarded the rule in order to cast District 12 into an entity distinctive from its membership, arguing "this is not to say that such voluntary, unincorporated associations may not sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship" (219 N.E. 2d 505; R. 96-97). This is in contrast to the previous characterization by an Illinois appellate court of a union's legal aid plan as socially needful when, in *Ryan v. Pennsylvania R.R.*, 268 Ill. App. 364, 374 (1932), it stated:

"The evidence . . . shows clearly the worthy purpose of the department and the necessity for its organization and maintenance. The instant case is an illustration of its benefit to the members. Respondent, prior to the time that petitioner assumed charge of the case, twice refused to pay Meadows a greater sum than \$6 000 in settlement of his claim, but when confronted with a trial, in which petitioner, an able and experienced lawyer, would

¹⁶ Title 28, Smith-Hurd Illinois Statutes (Permanent Ed.) provides that "the common law of England, so far as the same is applicable and of a general nature . . . shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority."

appear as counsel for Meadows, it secretly settled with the latter for \$11,000."

Since union members pay dues into their union, in a very real sense they are paying, or helping to pay, the attorney so as to have him available in litigation related to their employment if they desire the attorney's services. *Schwartz v. Broadcast Music, Inc.*, DC, S.D. N.Y., 1954, 16 F.R.D. 31, holds that each member of an unincorporated association is a client of the association's lawyer. There is just as close an attorney-client relationship between the attorney and the claimants he represents as there is between any workmen's compensation claimant and any other attorney, the only difference being that in the one instance the attorney fees are paid by a group of individuals jointly through their union, and in the other instance the fee is paid by the individual or often by someone else. Indeed, in the instant case when a claimant desires the attorney's representation made available by himself and his fellow-miners, and the attorney assumes the responsibility, the personal relationship exists and the attorney's professional and ethical obligations attach themselves to that relationship. This is emphasized herein by the undisputed fact that, under the attorney's employment, he receives no "instructions or directions" and has "no interference from the district, nor from any officer" and the attorney's "obligations and relations will be to and with only the several persons" he represents (R. 20). Thus, it is obvious and clear that there has not been any violation of the Canons involved herein since there is no employment of an attorney through an intermediary.

D. The Legal Aid Plan Used By United Mine Workers Finds Judicial Sanction In This Court's *Button* and *Trainmen* Cases.

This Court, in *Trainmen's* clear language (377 U.S.

1, 5), mandated that the First Amendment's "guarantees of free speech, petition and assembly give [in this case, United Mine Workers] the right to gather together for the lawful purpose of helping and advising one another in asserting" statutory rights. While *Trainmen* was concerned with a federal enactment relating to damage actions, the Court's enunciation therein is equally applicable to a state workmen's compensation statute designed to provide coal miners and other workmen with benefits for injuries sustained by them in exchange for common-law damages, since the Court's further avowal that "statutory rights . . . would be vain and futile if the workers could not talk together freely as to the best course to follow" (377 U.S. 5-6) emphasizes that the conduct sanctioned in *Trainmen* was impressed with constitutional rights derivative from the First Amendment to the Federal Constitution.¹⁷

Nor did this Court stop with these avowals in *Trainmen*. Its continued guidelines fit precisely what United Mine Workers did in the instant case in the establishment of their legal department. "The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel" and "That is the role played by the members who carry out the legal aid program" (377 U.S. 6). Moreover, if there be need for a federal statute to authorize their conduct, then the Act's Section 7 serves as an expression of national labor policy to justify the conduct which the Illinois Supreme Court has condemned herein.

¹⁷"Group Legal Services: The Case for BRT", by George E. Bodle, 12 University of California Los Angeles Law Review 306, 323, recites of BRT that "it is clear that the protection of the first amendment cannot, in logic or practice, be confined to consultation about federal laws, but also extends to state laws and rights and liabilities generally."

But whether District 12 be regarded as a jural entity or, as Illinois has proclaimed it, an organization which has no existence apart from its members, *form* does not dissipate the concern the union has with the protection and welfare of its members. As representative of its members employed in the coal industry, the union bargains collectively in behalf of the members as part of its program of improving working conditions. Indeed, this Court has characterized unions acting as collective bargaining representatives as service agencies. *Local 357, Teamsters v. NLRB*, 365 U.S. 667, 675-76. Union activities have included the enactment, improvement and enforcement of workmen's compensation statutes. The union's interest in the welfare of its members, singly and collectively, does not cease when a member becomes injured. To the contrary, the injured member's ability to resume work upon recovery or rehabilitation, where recovery is not possible, and his welfare and that of his dependents have been of primary concern to United Mine Workers of America. Its long struggle to "provide security for employees and their families to enable them to meet problems arising from unemployment, illness, old age or death" through a welfare and retirement fund is recorded in the judicial history of this Court's *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 468, and other federal authorities.¹⁸

E. The Union's Payment of the Attorney's Salary To Handle Workmen's Compensation Claims Does Not Withdraw the Plan From the Constitutional Protection Recognized In the *Button* and *Trainmen* Cases.

Though avowing (R. 104) "the Mine Workers may validly advise their members to seek legal advice in con-

¹⁸ See *Penello, Regional Director v. Int. Union, UMWA*, DC, D.C., 1950, 88 F. Supp. 935; *U.S. v. Int. Union, UMWA*, DC, D.C., 1950, 89 F. Supp. 187; *U.S. v. Int. Union, UMWA*, DC, D.C., 1950, 89 F. Supp. 179.

nection" with their compensation claims and "may properly recommend particular attorneys deemed competent to handle such litigation," the Illinois Supreme Court condemned District 12's "employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" (R. 102), emphasizing that "The lawyer is not paid for his services by the client; his salary is paid by the association" (R. 101), ignoring that such employment was at the direction and behest of the coal miner members and as their bargaining agent.

To the United Mine Workers' contention that this Court's *Trainmen* (377 U.S. 1) and *Button* (371 U.S. 415) cases compelled a reversal of the trial court's injunctive decree, the Illinois Supreme Court's response was that *Trainmen* "does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims"; that *Trainmen* does not constitutionally protect the "employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission" and that *Button's* "constitutionally protected political expression . . . cannot . . . be equated with the bodily injury litigation with which we are concerned here" (R. 103). To reach its conclusion, the Illinois Supreme Court of necessity had to ignore and evade this Court's crucial language in *Trainmen*, indicating its imprimatur upon the very activity condemned by the Illinois Supreme Court herein, and reading (377 U.S. 7):

"It is interesting to note that in Great Britain unions do not simply recommend lawyers to members in need of advice; they retain counsel, paid by the union, to represent members in personal lawsuits, a practice similar to that which we upheld in *NAACP v. Button*, supra" (371 U.S. 415).

Indeed, the Question Presented in *Button*'s certiorari petition included the element of the organization's "defraying the costs and expenses of litigation" instituted to vindicate constitutional rights; and it is argued that in tying the decision in *Trainmen* to *Button*, *Trainmen*'s "constitutional protection extends beyond the recommendation of lawyers and includes their employment".¹⁹

So, too, in regard to *Button*, the Illinois Supreme Court failed to follow this Court's admonishment therein when it said (371 U.S. 429) "a State cannot foreclose the exercise of constitutional rights by mere labels." Yet, the Illinois Supreme Court did precisely that in its quotation above, for it is not a matter of equating protected political expression "with the bodily injury litigation," as the Illinois court stated (R. 103), but rather implementing that litigation in terms of the First Amendment's guarantees of free speech, petition and assembly under which coal miners have the right to gather together to help and advise one another in the assertion of their legal rights under the Illinois Workmen's Compensation Act and "to select a spokesman from their number who could be expected to give the wisest counsel" (377 U.S. 5-6). Furthermore, *Trainmen* is clear and positive that its *Button* case is not restricted, as the Illinois Supreme Court claims, to political expression. In *Trainmen*, the Court observed that "the Constitution protects the associational rights of the members of the union precisely as it does those of the NAACP" (377 U.S. 8).

In *Trainmen* (377 U.S. 7), this Court said that "Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully coun-

¹⁹ 29 U. S. Law Week (Supreme Court Proceedings) 3273; Article, "Availability of Legal Services: The Responsibility of the Individual Lawyer And Of The Organized Bar", by Elliott E. Cheatham, 12 University of California Los Angeles Law Review 438, 448-49.

seled adversaries . . and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics." Moreover, while the Illinois Supreme Court professed its adherence to its previous *In Re BRT*, 13 Ill.2d 391, 150 N.E.2d 163, precluding any financial connection between a union and counsel selected by it to handle individual membership claims, the financial arrangement condemned by the Illinois Supreme Court in its *BRT* case is totally different from the arrangement between United Mine Workers and the attorney representing injured members in workmen's compensation cases. The Illinois Supreme Court itself described the financial arrangement that it condemned thus:

"No lawyer can properly pay any amount whatsoever to the Brotherhood or any of its departments, officers or members as compensation, reimbursement of expenses or gratuity in connection with the procurement of a case. Nor can the Brotherhood fix the fees to be charged for services to its members" (13 Ill.2d 397-98, 150 N.E.2d 167).

Thus, it is readily seen that the financial arrangements proscribed by *BRT* bear no resemblance to the Union's payment of salary in the instant case. Coal miners are not themselves engaging in the practice of law, as *Trainmen* made clear (377 U.S. 6-7), by recommending competent lawyers to each other; and the Union is no more than the medium through which its individual injured members make effective their constitutional rights, as this Court indicated in *Button* (p. 443) quoting from *NAACP v. Alabama*, 357 U.S. 449, 459. Indeed, in *Button* (371 U.S. 415, 443) this Court's declaration that the National Association for Advancement of Colored People "and its members are in every practical sense identical"

followed its avowal that "the aims and interests" of that group association "have not been shown to conflict with those of its members". These avowals are equally apposite in the instant situation. The Illinois Supreme Court's condemnation of District 12's financial payment to the attorney on a salary basis could well place injured coal miners in a posture which would "bar them from resorting to the courts to vindicate their legal rights"; mere advice that an injured employee should procure an attorney's services or those of a particular attorney is "of little avail if that person still faces an economic barrier".²⁰ And, as *Trainmen* declares (377 U.S. 7), "The right to petition the courts cannot be so handicapped." Both *Trainmen* and *Button* make positive that a state is forbidden by the Fourteenth Amendment from infringing upon First Amendment rights.

Only recently the Virginia Supreme Court, interpreting this Court's *Trainmen* case, held that the ruling therein required a broad interpretation, saying that *Trainmen*'s mandate "was issued to protect the right to conduct activities under a benevolently inspired plan concerned with the prosecution of rights" under statutes "where the State had failed to show an appreciable contrary public interest." *Brotherhood of Railroad Trainmen v. Commonwealth of Virginia ex rel. Virginia State Bar*, 149 S.E. 2d 265, 271 (Va., June 13, 1966).

F. The Illinois Supreme Court's Rulings Herein Vary From the Canons' Interpretation Heretofore Enunciated By the American Bar Association's Committee on Professional Ethics.

In its Informal Opinion No. 469, the American Bar Association's Committee on Professional Ethics an-

²⁰Note, 52 Iowa Law Review 351, 356.

nounced that "*There is nothing unethical in an employer, association or union agreeing to pay the legal expenses of an employee or member, so long as the selection of the attorney is left to the employee or member and he has no responsibility to the employer, association or union.*"²¹

The United Mine Workers' plan is totally consonant with the quoted Opinion: indubitably, the attorney receives no instructions or directions and has no interference from the District, nor from any District 12 officer, and his "obligations and relations" are "to and with only the several persons" he represents (R. 20). The attorney's employment letter (R. 19-20) merely makes the attorney available if an injured employee "*desires your services*" but "If he is represented by other counsel you will immediately turn over his file to such counsel" (R. 19-20). Significantly, departure from such policies is not even suggested by the Bar Association. Indeed, the record would support no charge of any practices deviating from the avowed policies.

The Illinois Supreme Court's views as to the Union's paying an attorney to represent its members' claims in workmen's compensation cases contrasts with the imprimatur, under Canons of the American Bar Association, given to insurance companies. The Association's Committee on Professional Ethics and Grievances, when asked if a lawyer, *employed and compensated by an automobile insurance company*, which holds a standard contract of insurance with an insured, could with propriety defend the insured in an action brought by a third party without making any financial charge to the insured, answered in the affirmative. In so doing, the Committee made it clear that "*the lawyer so employed shall represent the insured*."

²¹ The quoted language is from the May, 1962 Issue of the American Bar Journal, p. 473.

as his client with undivided fidelity" and that "If the insured does not desire to avail himself of the company's obligation to defend the suit including counsel, . . . he is at complete liberty to renounce his rights under the insurance contract and employ independent counsel at his own expense."²²

It is notable that in sanctioning the insurance company's employment and compensating the attorney, the Committee states that "The company and the insured are virtually one in their common interest" (p. 593). As already noted, clearly in the instant situation the same may be said of the Union and its injured employee-members.

Conclusion on Argument I

Thus, United Mine Workers submit that the trial court's injunctive decree (*ante*, pp. 9-10) and the Illinois Supreme Court's affirmance thereof and its opinion, not only are erroneous in holding that the conduct involved herein is violative of Canons 35 and 47, but they are in contravention of the rights guaranteed under the First and Fourteenth Amendments to the Federal Constitution and by Section 7 of the Act (29 USC 157), and are at variance with the holdings in *Trainmen* and *Button*, as well as the rationale thereof. Reversal is appropriate.

II. CONTRARY TO THE ILLINOIS SUPREME COURT, THERE IS NO COMPELLING STATE INTEREST TO WARRANT A LIMITATION OF MINE WORKERS' CONSTITUTIONAL RIGHTS. THE COURT'S JUDGMENT AND OPINION CONTRAVENE ILLINOIS PUBLIC POLICY AS EXPRESSED BY THE LEGISLATURE IN THE WORKMEN'S COMPENSATION STATUTE.

A. There Is No Compelling State Interest to Warrant a Limitation of Mine Workers' Constitutional Rights.

The Illinois Supreme Court believed, and United Mine

²²"*Opinions of the Committee on Professional Ethics and Grievances*," published by the American Bar Association (1957), Opinion No. 282, May 27, 1950, pp. 591-96.

Workers say erroneously, that its affirmance of the trial court's decree (*ante*, pp. 10-14), is "permissible in view of the interest of the State in controlling standards of professional conduct" (R. 104).

The Court's belief is that "substantial commercialization of the law profession *may* follow" (R. 105) if District 12 is permitted to employ an attorney for the purposes discussed. Yet, in view of the fact that the instant record contains no suggestion thereof in an experience of 53 years, it is obvious that the Court's statement is imaginary rather than real. Just how there could be commercialization of the legal profession under the undisputed facts herein, the Illinois court does not bother to explain. Such omission is obvious from the facts which show that employee members seeking the attorney's services need not, and indeed do not, pay anything out of the awards; the attorney is forbidden to charge or receive from the individual employee any portion of the recovered amount. With the Union's only interest being that an injured member is adequately compensated, "the conflict argument loses its vitality".²³ Thus, neither the attorney nor the Union is financially enriched by reason of a larger volume of claims. Thus, a traditional argument given for not allowing group legal service plans, namely, that they permit the organization to direct and control the attorney, thereby creating a possible conflict of interest between the individual litigant and the organization does not exist in the instant case. The Illinois Supreme Court in *In Re BRT* conceded that *union interest* "antedates the occurrence of any particular injury" to a union member (13 Ill. 2d 397, 150 N.E. 2d 167); and in *Button*, this Court declared that the identity of interest between NAACP

²³ Note, 52 Iowa Law Review 351, 354.

and its members mitigated the possibility of conflict of interest (371 U.S. 444). These professions have equal applicability in the instant case.²⁴

On the other hand, there are compelling reasons why United Mine Workers would institute a group legal service plan. In addition to the reason disclosed by the record for instituting the plan in 1913, an injured worker may not know of his rights to workmen's compensation, or he may not be able to afford an attorney to assist him in collecting maximum compensation, or without guidance from his union spokesman, he might be subjected to pressure from his employer not to prosecute his claim. The instant plan serves three useful functions: (1) it appraises members of their legal rights and of the need for legal assistance; (2) it brings union members in contact with a competent attorney; and (3) it makes legal services available in a manner compatible with the public policy of Illinois (discussed below). Merely recommending to a person that he needs an attorney or even recommending a particular attorney is of little avail if the injured workman faces the economic barrier of being without funds to employ an attorney. Spreading the cost of legal services among the group by paying an attorney's salary out of the union treasury eliminates reluctance by an impecunious injured workman to seek counsel. Clearly, if a labor union has, as *Trainmen* declares, a constitutionally protected right to assist its members in securing competent counsel to prosecute legal claims; such right necessarily must include the right of an unincorporated union to employ on a salaried basis an attorney to perform those services, thereby making the constitutional right a reality rather than theoretical.

²⁴In "*Legal Ethics*", by Henry S. Drinker, Columbia University Press, 1961, the author (at page 167) states that "It is not believed" that Canon 35 "will prevent the labor unions from finding lawyers to advise their members."

B. The Illinois Supreme Court's Judgment and Opinion Conflict With Public Policy As Expressed By the Legislature of That State.

The compelling state interest which the Illinois court abortively avers finds full challenge in public policy as expressed by the Illinois legislature in its workmen's compensation statute. First effective in 1912, a principal objective thereof sought to make certain that no one takes anything out of an award except the injured person or his dependents, if he be deceased. To that end, the Illinois legislature provided in its Compensation Act's Section 138.21 (Appendix A, p. 2a) that "No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages . . ." In *Lasley v. Tazewell Coal Co.*, 223 Ill. App. 462, the plaintiff undertook to establish an attorney's lien to collect his fee as defendant's attorney before the Industrial Commission but the Court said:

"The language of this section is clear and conclusive. . . . There is nothing in the other sections of the Act which in any way conflicts with the provision referred to, and the purpose of the legislature is evident; it undoubtedly intended that no lien of any kind should be allowed to intervene to prevent the workman from receiving the benefit of the monthly compensation awarded to him. . . . The words 'any lien' in Section 21 referred to obviously included the lien provided for by the act creating attorney's liens."

Accord, *Crane Co. v. Loone*, 25 Ill. App. 2d 61, 165 N.E. 2d 728; *Parsons v. Granite City Steel Company*, 41 Ill. App. 2d 396, 190 N.E. 2d 644 (1963).

Even the Illinois Public Aid Commission is not allowed to reimburse itself out of an award though Illinois' Pub-

lic Assistance Code provides that the Public Aid Commission shall have a charge upon all claims, demands and causes of action for injuries to an applicant for or a recipient of assistance, for the amount of assistance, it also mandates that "The provisions of this section shall be inapplicable to and no charge shall exist upon any claim, demand or cause of action arising under (a) the Workmens Compensation Act . . ."²⁵

III. THE INJUNCTIVE DECREE AFFIRMED BY THE ILLINOIS SUPREME COURT IS WITHOUT FACTUAL SUPPORT.

It has been demonstrated herein that the reasons assigned by the Illinois Supreme Court as to a compelling state interest are without factual basis. But even if the Illinois courts were correct concerning the compensation work (which United Mine Workers deny), still nothing in the record sustains the full scope of the injunction directed at District 12, "its agents and employees" (*ante*, pp. 9-10), particularly with reference to the inhibitions therein concerning (1) giving legal counsel and advice; (2) rendering legal opinions; (3) representing themselves in any claims other than under the compensation act; (4) employing attorneys to represent them in any other kinds of claims "which they may have under the statutes and laws of Illinois"; and (5) practicing law in any form directly or indirectly.

It is well settled that an injunction decree should conform to and be supported by proof; and it should conform to the requirements of the particular case, so as not to be broader or more extensive than the case warrants. *State*

²⁵ See *Donoho v. O'Connell's, Inc.*, 18 Ill. 2d 432, 164 N.E. 2d 52, which rejected the contention that the exception was unconstitutional because discriminatory and arbitrary. Indeed, in *Donoho* (p. 56) the Illinois Supreme Court said, "It is common knowledge that the amounts recovered under [workmen's compensation] statutes are far smaller than amounts recovered in common-law actions".

of *Wyoming v. State of Colorado*, 286 U.S. 494. See also *NLRB v. Express Publishing Co.*, 312 U.S. 426; *Communication Workers v. NLRB*, 362 U.S. 479. When it is considered that the Illinois Supreme Court's conclusion that "United Mine Workers, District 12, are engaging, under our decisions, in the unauthorized practice of law" was premised upon the employment of an attorney on a salary basis to represent individual members' claims before the Industrial Commission (R. 102), it is obvious that the injunction order, as affirmed by the Illinois Supreme Court, is far broader than the proof. Moreover, even should the Court conclude that its *Trainmen* and *Button* cases are inapplicable, still the Illinois Supreme Court's affirmance is offensive to those cases in that it violates and fails to provide for the permissive conduct affirmatively avowed by *Trainmen* and *Button*.

CONCLUSION

For the reasons herein discussed, United Mine Workers of America, District 12, submit that this Court should reverse and set aside the judgment of the Illinois Supreme Court entered May 23, 1966, herein complained of (R. 106), and its order denying United Mine Workers' Petition for Rehearing (R. 108), as well as the Trial Court's Order of September 7, 1965 (R. 24-25), and remand the case with directions that judgment be entered in favor of United Mine Workers of America, District 12, pursuant to their Motion for a Summary Decree and that the complaint herein be dismissed in its entirety. In any event, the injunction order should be modified.

Respectfully submitted,

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Dated: August, 1967

APPENDIX A

CONSTITUTION OF THE UNITED STATES

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX

LABOR-MANAGEMENT RELATIONS ACT, 1947

Section 1 (a) (1) (A) (i) Right of employees to organize.
It is the policy of the United States to encourage and assist the development of labor-management cooperation.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of labor disputes or other mutual aid or protection, shall also have the right to refrain from any or all of the foregoing except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in writing by a majority of the employees in a bargaining unit of this title.

APPENDIX

APPENDIX A**CONSTITUTION OF THE UNITED STATES****Amendment I**

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* * *

LABOR MANAGEMENT RELATIONS ACT, 1947:

Section 7 (29 USC 157) *Right of employees as to organization, collective bargaining, etc.*

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title.

Canons of Ethics of the Illinois State Bar Association

“(35) Intermediaries. The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer’s responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer’s relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

“A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs. * * *

“(47) Aiding the Unauthorized Practice of Law. No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.”

* * *

Illinois Revised Stat. (1959), Ch. 48, Sec. 138.21

“No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages. . .”

IN THE
Supreme Court of the United States

October Term, 1966

No. [REDACTED]

33

UNITED MINE WORKERS OF AMERICA,
DISTRICT 12,

Petitioners,

v.

ILLINOIS STATE BAR ASSOCIATION, an Illinois
Not for Profit Corporation, CURTIS F. PRANGLEY,
BERNARD H. BERTRAND, WILLIAM FECHTIG,
KOREAN MOVSISIAN, HENRY W. PHILLIPS,
WILLIAM C. NICOL, JOHN W. HALLOCK, WATTS
C. JOHNSON and MARSHALL A. SUSLER, indi-
vidually and as members of the Committee on Unau-
thorized Practice of Law of the Illinois State Bar
Association,

Respondents.

**MOTION AND BRIEF OF NATIONAL LAWYERS
GUILD, AMICUS CURIAE**

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IN THE
Supreme Court of the United States

October Term, 1966

No. 884

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioners,
v.

ILLINOIS STATE BAR ASSOCIATION, an Illinois Not for Profit Corporation, CURTIS F. PRANGLEY, BERNARD H. BERTRAND, WILLIAM FECHTIG, KOREAN MOVSISIAN, HENRY W. PHILLIPS, WILLIAM C. NICOL, JOHN W. HALLOCK, WATTS C. JOHNSON and MARSHALL A. SUSLER, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association,
Respondents.

Motion for Leave to File Brief *Amicus Curiae*

The National Lawyers Guild hereby respectfully moves the Court for permission to file a Brief *Amicus Curiae* in support of Petitioner. Counsel for Petitioner has consented to the filing of this Brief, but counsel for Respondent has withdrawn his consent. (See letters on file with the Clerk of the Court.)

The National Lawyers Guild is a national bar association which has long been interested in broadening the base of available legal services within the ethical standards of the profession. The Guild believes Petitioner's plan to be an important advance in this direction.

The Guild has received the Petition for Writ of Certiorari and the opinion of the Supreme Court of Illinois in the instant case, and believes that the factual data presented herein will not be made available to the Court

Motion for Leave to File Brief Amicus Curiae.

by the parties. The data presented in this Brief Amicus Curiae demonstrate the needs of large segments of the population for legal services which is to a large extent not being met by the profession.

For these reasons the National Lawyers Guild respectfully requests permission of the Court to file a Brief Amicus Curiae in support of Petitioner.

Respectfully submitted,

VICTOR RABINOWITZ,
Attorney for National Lawyers Guild.

ALLAN BROTSKY,
DONALD L. A. KERSON,
of Counsel.

IN THE
Supreme Court of the United States

October Term, 1966

No. 884

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioners,

v.

ILLINOIS STATE BAR ASSOCIATION, an Illinois Not for Profit Corporation, CURTIS F. PRANGLEY, BERNARD H. BERTRAND, WILLIAM FECHTIG, KOREAN MOVSISIAN, HENRY W. PHILLIPS, WILLIAM C. NICOL, JOHN W. HALLOCK, WATTS C. JOHNSON and MARSHALL A. SUSLER, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association,
Respondents.

**BRIEF OF NATIONAL LAWYERS GUILD,
AMICUS CURIAE**

The National Lawyers Guild is a national bar association with chapters throughout the country. While the Guild has always been concerned with maintaining the integrity of the legal profession, the Guild also recognizes the necessity of extending the availability of legal services to all members of the community. Believing that the Mine Workers plan, under review here, represents a significant contribution toward this end, the Guild submits this brief in support of petitioner.

Serious Unfilled Needs for Legal Services Presently Exist

Surveys of the legal profession conducted in the past several decades have revealed a substantial public need for legal services, which need is not being satisfied by the profession.

In the last twenty years the purchasing power of wage and clerical workers in the United States has doubled,¹ yet the Bureau of the Census still finds it unnecessary even to identify by name any expenditures for legal services by this group. The statistics show an increase in outlay for medical services of 142 percent between 1936 and 1950, and reflect great changes in the nature and character of other outlays.² However, aside from "miscellaneous goods and services," the lowest category in absolute figures and percentages, expenditures for legal services, are not reflected.³ The Bureau of the Census has published data on personal consumption expenditures by type of product from 1929 to 1959, and although "medical care and death expenses" rose from \$3,544 million in 1929 to \$17,826 million in 1958,⁴ there is again no category for legal expenditures. It should also be noted that in the 1930's the average family had a small surplus remaining after expenditures; the average family of 1950 had a deficit of nearly \$200.⁵ The outlay for legal services by a large segment of the population is virtually nonexistent.

¹ Williams, "Standards and Levels of Living of City-Worker Families," 79 *Monthly Lab. Rev.* 1015, referring to materials "brought together for the Sub-committee on Low-Income Families of the Congressional Joint Committee on the Economic Report."

² *Id.* at 1019.

³ It has been estimated that expenditures for legal services by persons and entities of all economic levels amount to less than one-third of expenditures for medical services. American Bar Foundation, *Lawyers in the United States: Distribution and Income* (1958).

⁴ *Statistical Abstract of the United States* 309 (1960).

⁵ Williams, *supra*, note 1, at 1021.

According to a research survey by the American Bar Foundation, of "working class" families with legal problems only "about 30%" consult a lawyer.⁶ Of "middle class" families with legal problems, only "about 50%" seek and obtain legal advice.⁷ A 1960 supplementary report confirms that the situation has not changed since the original survey was made.⁸

In 1948 Professor Earl Koos collected and analyzed "data concerning the problems experienced by a number of middle-class and working-class families, the extent to which they recognize their need for help, and their use of the lawyer in solving their problems."⁹ Koos found that while 60% of the middle-class families with problems consulted an attorney, only 44% from working-class families did so.¹⁰ When the families were asked, "Why didn't you consult an attorney?" 12% of the middle-class felt they were unable to afford the fees as compared with 54% of the working class.

Professor Koos concluded that, "The implications of these findings are such that exploration of the whole problem of the interpretation of the philosophy of law and its potential services to individuals in our society needs to be undertaken."¹¹

Although the actual and potential outlay for legal services of persons in the low and middle income groups is small, the need of persons in these groups for such services is nevertheless great. Some commentators of stature have asserted that satisfaction of this need is probably the most pressing, if largely unrecognized, responsibility of the bar

⁶ American Bar Foundation, Research Memorandum Series, "Prepaid Legal Expense Insurance", p. 1.

⁷ *Ibid.*

⁸ *Id.*, "Supplementary Memorandum on Prepaid Legal Expense Insurance" (March 1960).

⁹ Koos, *The Family and the Law*, p. 1 (1948).

¹⁰ *Id.* at 5.

¹¹ *Id.* at 7.

today.¹² Suffice it to say that although the legal problems of lower-income citizens may differ in kind from the problems of wealthier members of society, they are serious indeed and merit the consideration of the organized bar.

It is surely no exaggeration to say, "The most important problem facing the American legal profession today is that of providing adequate legal services for all the people of this country."¹³

The furnishing of legal services through group action is both efficacious and consistent with legal ethics.

It would seem that permitting non-profit groups, such as Petitioner, to combine their resources to assist their members in obtaining needed legal services would go far toward ameliorating the need on the part of the public for legal services that is now not being fulfilled. As Professor Turrentine has said:¹⁴

¹² Justice Thomas J. Brennan, "Address", 55 *Legal Aid Rev.*, No. 1, p. 20 (1957); Brownell, *Legal Aid in the United States* 52-55 (1951); Bar Ass'n of the District of Columbia, *Report of the Committee on Legal Aid* 145-146 (1958); Smith & Bradway, *Growth of Legal Aid Work* (1936); Koos, *The Family and the Law* (1952); Llewellyn, "The Uncovered Needs for Legal Services," 16 *Tenn. L. Rev.* 641, 644 (1944); Note, 13 *U. Chi. L. Rev.* 131. As to the unrecognized character of the need that exists, Professor Robert E. Stone states: "The members of the bar have been so isolated by their practice and social contacts from the great bulk of our city populations that it can truthfully be said that most lawyers are not even conscious of the fact that to most of our American citizens denial of justice in their personal affairs is normal." Quoted in Turrentine, "Legal Service for the Lower-Income Group", 29 *Ore. L. Rev.* 20, 21 (1949).

¹³ Note, "Group Legal Services", 79 *Harv. L. Rev.* 416 (1965); Schwartz, "Forward: Group Legal Services in Perspective", 12 *U.C.L.A. L. Rev.* 279, 286-295 (1965). Availability of legal aid through the auspices of the Office of Economic Opportunity programs will not lessen the need for members of working class families.

¹⁴ *Supra*, note 12, at 29-30.

"The simplest, most immediate way of bringing the cost of legal service within the reach of large numbers of our people is to . . . permit non-profit organizations of all kinds, such as trade unions, fraternal orders, consumer's cooperatives, mutual automobile clubs, and business and professional associations, to employ counsel to advise and represent members in their individual affairs. The premise upon which [this is prohibited by] Canon 35 is . . . that the lawyer's duty of undivided loyalty to his client (who in this case is a member of an organization) is subjected to the pressure of a conflicting loyalty if the lawyer is employed and controlled by the organization.

"There is substance to this objection only if the organization is furnishing legal service for a profit, in which case the lawyer might be influenced in the direction of the profit of the organization rather than the welfare of the member. If the purpose of the organization is not to make a profit but to provide its members with service, the likelihood of divided loyalty disappears. Cooperative procurement of legal service should no more be outlawed than cooperative procurement of medical service, now exceedingly common."

Decisions of this Court have established the right under the First Amendment of members of a labor union acting together to promote a particular interest of the group. *NAACP v. Button*, 371 U.S. 415 (1963); *Brotherhood of R.R. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964). Certainly Petitioner here has sufficient interest in its members' welfare to insure their receiving expert help and adequate awards in industrial accident cases.

A labor union must be capable of acting in the interests of individual members and thereby satisfying individual wants if it is to serve its statutory functions. In the words of Mr. Justice Frankfurter, "As a practical matter the employees expect their union not just to secure a collective agreement but more particularly to procure for the indi-

vidual employees the benefits promised. If the union can secure only the promise and is impotent to procure for the individual employees the promised benefits, then it is bound to lose their support."¹⁵

The principle just stated has long been established with respect to collective bargaining agreements. More recently, however, particularly since the adoption of Canon 35 in 1928, legislatures and courts have recognized the right of workers to associate for such broad purposes as the promotion of their "common welfare or interest," "benefit," "safety," "protection," "self-defense," "happiness," "mutual help and cooperation," and, generally, for the purpose of "elevating or improving their position," "bettering their conditions," "obtaining lawful benefits" or "redressing of their grievances."¹⁶

During the last thirty years, unions have evolved from groups oriented almost exclusively toward the conducting of strikes to broad-purpose organizations designed to service the needs of their members.

This evolution in the purposes of labor unions may well be in large part responsible for the increasing demand for legal services on the part of less well-to-do segments of the population. Increasingly, unions have obtained benefits by the negotiation of contracts and the utilization of judicial and administrative procedures rather than by strikes, thus graphically illustrating for their members the potential benefits of law and legal services. The new channels of labor relations which have developed have doubtless encouraged many members of labor unions to view their personal problems more often than formerly in terms of legal

¹⁵ *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, 457 (1955). See also *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, (1944); *Tunstall v. Brotherhood*, 323 U.S. 210 (1944).

¹⁶ 98 C.J.S., "Trade Unions", § 9, pp. 769-770. See also CCH, *Union Contract Clauses* (1954) *passim*.

rights and remedies. This association between unions and law, together with the fact that workers are unlikely to come in contact with attorneys in other ways or even to meet persons who frequently deal with attorneys, probably is in part responsible for the common tendency to seek legal help through unions.

The role of the labor union in the processing and administration of workmen's compensation claims is not one of a mere bystander. It is certainly clear that the efforts of unions were in large part responsible for the enactment of the statutes which make such claims possible.¹⁷ Numerous commentators have observed that these laws are valueless unless proper enforcement is secured through the vigorous and consistent representation of claimants. One of them, Walter F. Dodd, seems to indicate that the handling of individual cases can be of crucial importance to the effectiveness of the law in general.¹⁸

"One of the major problems of workmen's compensation is, therefore, that of providing adequate supervision for the settlement of a great mass of cases where there is no real contest. The uncontested claim may present little in the way of controversy between the parties, but it presents much of possible abuse in the relationship between the parties. If the purpose of the compensation law is to be accomplished, there must be adequate supervision to make sure that the employee receives the compensation to which the law entitles him. "Whether the case be contested or uncontested, there is an adversary relation between the parties which has an important bearing upon the administration of compensation laws . . . [W]ith conditions as they are and with the injured employee the weaker party, the pecuniary interest of the insurance carrier may defeat or unduly re-

¹⁷ See Gompers, *Labor and the Employer*, 135 et seq. (1920); AFL-CIO Convention, *Proceedings* 198-203 (1957); U.S. Dept. of Labor, Bureau of Labor Standards, *Proceedings of the President's Conference on Industrial Safety*, 73 et seq. (1952).

¹⁸ *Administration of Workmen's Compensation*, 55-56 (1936).

duce proper claims, and, in the interest of the employee, there must be not only a means of determining contested claims but a careful supervision over the settlement of uncontested claims, as well as a continuing supervision to assure full payment of all proper claims."

Other citations to the same effect are set out in the margin.¹⁹

In any examination of group legal services the persistent and unanswered question is, why it is "that individuals may band together to provide themselves with cheaper insurance, cheaper groceries, higher wages, better prices, easier credit, lower taxes, better health—everything, except better or cheaper advice and aid?"²⁰

¹⁹ Pillsbury, "Workmen's Compensation Court Proceedings", 76 *Monthly Lab. Rev.* 480 (1953); Petsko, "Workmen's Compensation", 76 *id.* 602; Gurske, "Problems of Administration", 76 *id.* 1179; International Ass'n of Government Labor Officials, "Labor Laws and their Administration", 101-102 (1958); U.S. Dep't of Labor, *The American Workers' Fact Book*, 178-201 (1960) ("Safety and Organized Labor"). Of particular interest is the decision of the Supreme Court of Illinois in *In re Brotherhood of Railroad Trainmen*, 150 N.E. 2d 163, 167 (Ill., 1958), upholding the interest of the Brotherhood in "seeking to secure competent legal representation of its members" in FELA cases.

It has been observed that compensation insurance carriers take a lively interest in the problem of obtaining expert representation in such cases. Bear, in "Legal Aid Service to Injured Workmen", 205 *Annals Am. Acad. Pol. & Soc. Sci.* 52 (1939) states: "These companies do not put just any attorney on the job. They train their counsel in workmen's compensation practice and procedure. Their men are given a series of lectures on the law. They are given periodic talks on new amendments and their significance and effect as far as the insurance company is concerned. They are sent out into the field to investigate compensation cases. After an extended period of such intensive training they are sent in before the Industrial Accident Board to battle. . . . [T]he injured worker . . . in far too many cases has no legal representation at all, and if he has, it is not of the skilled and specialized type acting for his insurance antagonist".

²⁰ Weihofen, "Practice of Law by Non Pecuniary Corporation: A Social Utility," 2 *U. Chi. L. Rev.* 119, 128.

The Supreme Court of Illinois sought refuge from this trouble some question in Canons 35 and 47 of the Canons of Ethics of The American Bar Association and the Illinois State Bar Association. (Petition for Certiorari, page 8.)

Canon 35 offers little support for the Illinois court, as the history of that Canon reveals.

Mr. Henry S. Drinker, who was Chairman of the ABA Special Committee which drafted Canon 35, has stated that the Committee was of the view that the interest of a corporation or association in insuring that its employees or members received adequate legal services with respect to their individual affairs, justified provision by the entity or group of such services. The committee grudgingly added the crucial last sentence of Canon 35 only at the insistence of the ABA Committee on Unauthorized Practice, whose ruling was binding upon it.

Committee Chairman Henry S. Drinker has summarized and explained the development of Canon 35 as follows:²¹

"The unauthorized practice committee took the position that advice to employees in such matters by a lawyer employed by a corporation constituted the unauthorized practice of law. Our committee tried to change the minds of the unauthorized practice committee but was unsuccessful. . . . We were bound by that, and consequently we capitulated."

The same author explains further in his treatise, *Legal Ethics*, that the "same conclusion follows with regard to a labor union, automobile club, or association providing legal service for its members, although in each case the lawyer had direct relations with the employee member, and though the lawyer's service was restricted to matters in which

²¹ "The Ethical Lawyer," 7 *Fla. L. Rev.* 375, 383.

there was no conflict of interest between the corporation or association and the employee or member."²²

As Mr. Drinker has pointed out, the rationale provided by the unauthorized practice committee was unsatisfactory in the extreme.²³ Thus the committee said that the governing principle was the Biblical injunction, "No man can serve two masters." Yet this rationale has no application at all to cases where no conflict of interest is involved; and such cases seemingly would make up the vast majority of those stemming from the personal affairs of the employees or members concerned. The committee thus provided no persuasive reason for the adoption of the Canon as to most of the cases which it regulated.

Even more troublesome, the conclusion that representation of members of a group at the group's expense constitutes "unauthorized practice" proves too much. All authorities agree that group employment of counsel is proper where the individual member's problem is of concern to the group as a whole, as in the case of group backing of a suit by an individual to test improper tax practices. Yet such practices involve the identical features which the committee cited in condemning other forms of "group practice" as the unauthorized practice of law. In such cases the group "holds out" to prospective members the furnishing of capable legal counsel as an advantage and inducement, hence there is "indirect" group gain or group "exploitation" of a lawyer's services. The same may be said, indeed, of every liability or title insurance policy which calls for the providing of defense against prospective lawsuits.

Neither at the time Canon 35 was adopted, nor at any time since, has the unauthorized practice committee provided any explanation for these defects in its rationale. We question whether any adequate explanation is possible.

²² Drinker, *Legal Ethics* 165 (1953).

The fact that no satisfactory rationale has ever been provided for Canon 35 as applied to "group services" is doubtless one of the reasons why it has had adverse effect on the public relations of the Bar. Chairman Drinker, after stating that in his opinion corporations and associations do have a legitimate interest in assisting their employees or members to obtain legal services, indicated the objections to the rule that readily occur to the public as follows: ²³

"... With all respect for all the good work [the members of the unauthorized practice committee] have done, I think that some of the committee's rulings such as this one, place the bar in an unfavorable light with the public. While the rule ostensibly protects the public against incompetent lawyers, in some cases the real motivation for the ruling of the committee has perhaps been to keep for the little lawyers the ten and twenty-five dollar cases and to protect them from being taken away by a lawyer hired by a corporation. This attitude, or the belief by the public that this is the motivating factor in the rulings degrades the bar in the eyes of the public. It is regarded as a dog-in-the-manger attitude—the bar is trying to keep the public from getting less expensive yet better services. By and large, a lawyer hired by a corporation [or association] for this purpose would give better advice than the little fellow sought for advice of this nature. The bar has an obligation to see that the unauthorized practice committee, in its praiseworthy enthusiasm to protect the public, does not overdo things."

The duty of the bar is to serve the public and, as Mr. Justice Traynor said, "The rules it establishes to govern its professional ethics must be directed at the performance of that duty." *Hildebrand v. State Bar of California*, 36 C. 2d 504, 522, 225 P. 2d 508 (1950) (dissenting opinion). Where rules of ethics prevent attorneys from serving the

²³ Drinker, note 21, *supra*, *passim*. at 383-384.

public and deprive citizens of their associational rights under the First Amendment the rules cannot stand.

The Supreme Court of Illinois thought that Petitioner's plan could lead to possible situations where there might be a conflict of interest among the attorney, the organization which pays his salary, and the client. Realistically there is no more potential for an attorney abusing the attorney-client relationship in this setting than in any other.

The practice of law encompasses many situations where an attorney could misuse his position to the detriment of a client. There is a built in "potential for evil" in the very nature of legal practice. Yet it has always been regarded as sufficient protection to the public if Bar Associations proceed on a case by case basis to resolve possible conflicts of interest.

There is no suggestion in this record or the legal literature that this would not be a sufficient method of "policing" group legal services. There is nothing inherent in Petitioner's plan that would cause such conflicts. It is significant that although Petitioner's attorneys had processed almost 2000 claims and collected awards of over \$2,000,000 in the past six years, there is no suggestion in the record of even one case involving a conflict of interest.

The real benefits accruing to Petitioner's members should not be obscured by the chimerical possibility that conflicts may arise. "Few associations will have any strong interest inconsistent with their members' interest in obtaining legal victory." Note, 79 *Harv. L. Rev.* 416, 421 (1965).

The court below also postulated that Petitioner's plan would serve to "dilute the allegiance of the lawyer to the client, [and] weaken the integrity of their relationship . . ."

The editors of the Harvard Law Review examined this rationale and found that:

"Such arguments depend upon the highly speculative proposition that a lawyer will not give the same amount of care to a group-referred client as he would to an 'ordinary' client. But the personal attention that an attorney gives a client would seem to depend more on the lawyer's character than on the means by which the client comes to him. While a strong lawyer-client relationship is desirable, it is unlikely that group practice arrangements will weaken such relationships to any substantial extent. This possible disadvantage of group practice plans, standing alone, is not likely to be held sufficient to override the right to associate." (79 *Harv. L. Rev.* 422.)

Finally, it is clear that possible conflicts of interest have not deterred the courts and the organized bar from sanctioning the most extensive group legal service arrangement that now exists: the furnishing of counsel to insured persons, by public liability and other insurance carriers.

The postulated but unproved dilution of the "allegiance of the lawyer to the client" which concerned the court below about the Mine Workers plan actually occurs quite frequently in relations between defendants and the attorneys selected for them by their insurance carriers.²⁴ Yet the arrangement continues without any reappraisal by the courts or organized bar of the exception to the ethical rules which makes it possible.²⁵ Furthermore, although insurance against the costs of defending a lawsuit might well include merely paying for the legal services of an attorney selected by the insured himself rather than the company, the insistence of the carriers in selecting specific counsel for their insured likewise goes unchallenged by the organized

²⁴ A dramatic example is furnished by what occurred in *Crisci v. Security Ins. Co.*, 66 A.C. 435 (— Cal. Rptr. — (1967)).

²⁵ The exception to Rule 3 of the *Rules of Professional Conduct* of the State Bar of California (1958) is a typical example.

bar. Such a practice manifestly weakens the integrity of the attorney-client relationship.

In short, the spectres conjured up by the Supreme Court of Illinois, in justifying its injunction against the Mine Workers plan actually do exist in relations between clients and the attorneys selected for them by their carriers. If economic expediency alone justifies the practice of the insurance industry, how much more clearly does the First Amendment and the public interest call for approval, and expansion, of the plan of the United Mine Workers?

CONCLUSION

The plan of Petitioner under review here is an efficient and ethical means of providing group legal services. It is justified both by the Constitution and by the practical necessity of extending to those who have need of the services of the legal profession.

For the reasons above it is respectfully submitted that the judgment of the Supreme Court of Illinois be reversed.²⁶

Respectfully submitted,

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²⁶ In the preparation of this Brief, Amicus has relied upon a brief before the Board of Governors of the State Bar of California prepared by Norbert Schlei, Esq., and signed by eighty-six prominent California attorneys. The Guild wishes to thank Mr. Schlei for permitting this liberal use of his materials.

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In the Supreme Court

OF THE
United States

OCTOBER TERM, 1967

No. 33

UNITED MINE WORKERS OF AMERICA,
DISTRICT 12,

Petitioner,

VS.

ILLINOIS STATE BAR ASSOCIATION, et al.,
Respondents.

On Writ of Certiorari to the
Supreme Court of Illinois

MOTIONS (A) FOR LEAVE TO FILE BRIEF AMICUS CURIAE,
(B) FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT,
AND BRIEF AMICUS CURIAE OF THE
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I

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Respondents.

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The State Bar of California, a public corporation, respectfully moves the Court for permission to file the attached brief *Amicus Curiae*, and assigns the following reasons.

The State Bar of California, a public corporation under the Constitution and laws of the State of Cali-

foria, is one of the larger integrated bars. Its present active membership is approximately twenty-six thousand. Its present inactive membership is approximately two thousand. This State Bar is vested with broad responsibilities relating to the legal profession and to the practice of law. *See Cal. Bus. and Prof. Code, Sections 6000 et seq.*

Included in its functions are the duties of the Board of Governors to adopt and amend rules of professional conduct for attorneys, subject to the approval of the Supreme Court of California, to "enforce" such rules and the Statutes on this subject (subject to paramount authority of the Supreme Court of California), and to enforce statutory restrictions against unauthorized practice of law.

The Board of Governors of the State Bar is charged with the responsibility to:

"... aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public." *Cal. Bus. and Prof. Code, §6031.*

For more than nine years, successive special committees of the State Bar of California have studied the complex problems presented by the so-called group legal services, and their reports are perhaps the pioneer published works of bar organizations on the subject. 34 Calif. St. Bar Jnl. 318; 35 Calif. St. Bar

Jnl. 710; 39 Calif. St. Bar Jnl. 639. The views of this State Bar, therefore, may be of some assistance to this Court in its resolution of what we consider the narrow issue involved in this case, not fully met in Petitioners' brief or in briefs of the several *amici*.

We have asked permission of the parties to file this brief *amicus curiae*; Counsel for Petitioners and Counsel for Respondents have refused consent.

Wherefore, The State Bar of California prays that the attached brief *amicus curiae* be permitted to be filed with this Court.

Dated: September 15, 1967.

Respectfully submitted,

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BRIEF OF
THE STATE BAR OF CALIFORNIA
AMICUS CURIAE

STATEMENT OF THE CASE

The Supreme Court of the State of Illinois has held that Petitioners, United Mine Workers of America, District 12, were engaging in the unauthor-

ized practice of law by the operation of a particular arrangement involving the employment by Petitioners of a part-time salaried attorney to represent Petitioners' members in certain phases of the processing of workmen's compensation cases. That holding was made on an appeal from a summary judgment entered upon motion and based upon a record disclosing, in considerable detail, just how the particular arrangement worked in practice.

The plan or arrangement that was before the Illinois Courts is generally described at pages 5 through 9 of Petitioners' brief under the heading of "The Facts." A further discussion of some of its features is also incorporated in our argument, especially at pages 8 through 13, *infra*.

Our brief is filed for the principal purpose of emphasizing (1) the interests which California and other states have in resolving the manifold problems often loosely grouped under the heading "Unlawful Practice of Law"; (2) that the several states, and California in particular, deal with various phases of these problems—including the representation of injured persons in workmen's compensation proceedings—in ways different from those adopted by Illinois; (3) that the problems are so complex, and the solutions being tried and suggested so divergent in direct and collateral effect, that meaningful evaluations can only be made of particular programs; (4) that the Court below could reasonably find, upon review of the particular plan of Petitioners, that the form of "representation" that it afforded was so in-

herently, necessarily or probably inadequate as to be contrary to the public interest, as well as the interest of the union members; and (5) that the record before this Court is grievously inadequate for any broad pronouncement as to constitutional protection of group legal services, or varieties thereof, or the constitutional limits of state power to regulate the unauthorized practice of law and to preserve the high standards of the legal profession.

We submit that on the record before this Court, the only issues to be decided are whether the Illinois Supreme Court could constitutionally rule that Petitioners' particular salaried attorney plan as it was actually conducted was contrary to the public interest and an unlawful practice of law, and, if so, whether the Illinois Court had the power to make the decree it did. This brief is directed to the first of these issues only.

ARGUMENT

I

IN THE PARTICULAR CIRCUMSTANCES SHOWN IN THIS RECORD, THE COURT BELOW COULD REASONABLY BELIEVE PETITIONERS' PLAN FOR LEGAL ASSISTANCE TO BE IMPROPER AND THEREFORE CLEARLY WITHIN ITS POWER TO PROHIBIT.

As we will show, in actual operation, the Illinois plan considered below lacked a true attorney-client relationship, involved an undesirable intermixture of union and attorney responsibilities, and created a substantial risk of inadequate legal representation.

It is this plan, as shown in actual operation by the record, that is properly to be reviewed by this Court, not some hypothetical or actual variant thereof, and not the concept of group legal services itself (*cf. United Public Workers v. Mitchell*, 330 U.S. 75). While it is not our purpose to review at length the evidence and facts judicially shown, the following facts are pertinent.

Under the plan, the part-time salaried attorney's responsibilities covered a large geographic territory and involved a very heavy annual case load. In one year (1964), four hundred and sixteen (416) applications were filed with the Commission in his name; four hundred and eighty-seven (487) were concluded. (R. 54.) His predecessor in a two and one-half year period (January 1, 1961-June, 1963) filed one thousand three hundred and eighteen (1,318) applications; one thousand three hundred and twenty-eight (1,328) were concluded (R. 60), for an average *annual* rate of five hundred and twenty-seven (527) "filings" and five hundred and thirty-one (531) closings. Average compensation payments to the injured workers or dependents per case were: 1964: 487 closed, total payments: \$528,885.12 (R. 54), average: \$1,083.95; January 1, 1961-June, 1963: 1,328 cases closed, total payments: \$1,859,640.65 (R. 60), average: \$1,400.33.¹

¹Published statistics indicate a high incidence of injury in coal mining and preparation. Both in average number of work injuries and severity, industry percentages are among the highest of the 42 occupations listed. *Statistical Abstract of the United States* (1966), U. S. Department of Commerce, p. 244.

The attorney (whose sole compensation, no matter how many his cases or how complex they might be, was his fixed annual salary) handled these cases at a cost of Twenty-Five Dollars and Forty-Six Cents (\$25.46) per case for the current attorney, and Twenty-Three Dollars and Thirty-Four Cents (\$23.34) for his predecessor.

The letter of employment of the attorney, dated September 26, 1963 (R. 19, 20) states that the attorney's duties were: "to see to it . . . *with the help of secretaries . . . and officers of local unions*, that no member or dependent loses his rights . . . by reason of failure to *avail himself* (of his rights) *in time*. Also, to represent him *before the Commission* if he desires your services." (R. 20, f. 25.) (Emphasis supplied.) The attorney's contractual duties were therefore apparently limited to assuring the timely filing of claims and representation of the claimant before the commission itself.

These functions were the only ones performed "before the Commission" by the attorney, except for negotiating settlements with opposing counsel at the time of the hearing on the claim (R. 45) and occasionally suggesting that the client obtain a further medical report (R. 42). It does not appear that either under his contract with the union, nor in actual practice, the attorney provided the claimants with the full representation which would normally be the obligation of an independent attorney to give his client, in the light of the peculiar facts and circumstances of the client's particular case.

The union form "Report to Attorney" (R. 16, 17) indicated on its face that the matter would be handled through the union. It contained no request by the individual worker for retention of the salaried attorney as his attorney, nor did it call to the worker's attention his right to retain, or the possible desirability of retaining, his own counsel. It does not even contain the name of the salaried attorney.

It specifically instructs the worker: "Do not make this report until *after demand* on the company has been made and either no compensation is paid, or not a sufficient amount." (R. 16.) (Emphasis supplied.) This language would tend to forestall or discourage the timely securing of legal advice and representation, as well as placing upon the injured worker, without assistance of counsel, the burden of framing the proper "demand" and that of determining whether or not "sufficient" compensation has been paid. Workers can hardly be presumed to be sufficiently well-versed in the intricacies of workmen's compensation law to be familiar with the requirements of the Compensation Act, or the potentials of their cases.

As this plan was operated, the union officers, employees and co-members, in many cases independently of the attorney, interviewed the injured workers and aided them in formulating facts. It was the president, secretary-treasurer, board member of Local District 4; board member of Local District 6; board member of Local District 7; the president's secretary in Springfield, the secretary in the West Frankfort office, an international special representative, a district

special representative, and un-named officers or members of local unions who were responsible for the union's legal aid program. (Ans. to Inter. 6, R. 56, 57.)

In making the "Report to Attorney" on the union form, "members, either by themselves, or with the assistance of some other member, or officer, of the local union, prepare, sign and file" the report. (Ans. to Inter. 8, R. 57.)² In most instances, the attorney had not seen the injured worker before he filed the application for adjustment. (R. 40.) Indeed, it appears that secretaries of the union, working from the "Report to Attorney," were authorized to complete the Application, sign the attorney's name, and forward it directly to the Industrial Commission. (Ans. to Inter. 12, R. 58; R. 36, 38, 40; Pet. Br. pp. 8, 9.)

A critical portion of workers' cases under compensation acts, of course, is the preparation and presentation of medical evidence. Under Petitioners' plan, however, the attorney made no particular preparation of the medical evidence. After the claim was filed, neither the union nor the attorney made arrangements for the obtaining of reports from doctors, other than requesting those of the company doctors. They relied upon what was done by the injured worker. He was instructed "that if he obtains any

²Petitioners' answer to Inter. 11 states the practice thus:

"Sometimes another member or officer of the Local Union (interviews the injured worker). Occasionally a district executive board member. Interview may be had at the mine, the home of the injured person or of the officer who helped him with his accident report. The extent of the interview is determined by the nature of the injuries . . ." (R. 57, f. 83.)

medical assistance or a report arising out of medical assistance that was received from that accident, it would be helpful" (emphasis supplied) to the attorney, if the attorney could have a copy. (R. 41, f. 60.) Later, this statement was qualified by the attorney who stated: "I will on occasion suggest that perhaps in order to be properly prepared that *he* seek other medical attention. Sometimes . . . we feel that it would be helpful in developing the case . . ." (or) we feel that maybe he hasn't had adequate medical attention. . . . I think that that would only be done by myself" (and not by union representatives).. (R. 42, f. 61.)

Even the preparation of the injured worker for his hearing before the Commission compared poorly with that an attorney would normally be expected to give even an ~~incidental~~ witness in a case properly handled. There was no planned personal conference between attorney and his "client" before the hearing. The record shows that, generally speaking, the only thing the worker would get would be a notice from the Commission to appear at a certain day and place. (R. 43, 44.)

Unless the attorney "needed him (the worker)—unless he (would) come in the Springfield or West Frankfort office," the first time the attorney would see the worker would be the day of the hearing. (R. 44.) The attorney did not even have a regular schedule to be in either office to facilitate interviews with his "clients" (R. 61, Answer to Inter. 40), though he claimed that it was known that he would be in the

West Frankfort office on certain days, and that many of the applicants came in and consulted with him prior to the hearing. Certainly not all did. (R. 43.)³

The files on the claims of the injured workers were not those of the attorney. He kept the file only while it was active, and then returned it to the office of Petitioners, where it was kept. (R. 48.) When the current attorney accepted his appointment, pending files initialed by his predecessor were simply turned over to him, apparently without consultation with the claimants. (R. 48.)

From this account, it should be clear: *First*, that under the plan here under review, the attorney normally had only minimal and indirect contact with the facts and potentials of the case; *second*, that the arrangement did not permit and in fact discouraged timely legal advice and active advocacy of the claims of particular workers, including the expenditure of substantial time on questions of fact or law where this might be required in the worker's interest; *third*, there was an intermixture of activity by union officers and employees and activity by the attorney, with the result that neither assumed clear-cut responsibility for safeguarding the workers' rights in a competent manner, and there were apparently no controls to in-

³At the hearing at DuQuoin, for example, there might be five or ten miner-applicants. (R. 43.) At that time, the attorney consulted with the counsel for the coal company in a sort of pre-hearing negotiation session, and made a recommendation. If the amount was not satisfactory, they went to hearing. (R. 45.) In some cases, the coal company had already paid the sum agreed upon, and a dismissal was filed, without the need for a settlement contract. (R. 45.)

sure that legal advice was given only by, or at the direction of, the attorney; and, *fourth*, the arrangement permitted confidential communications between attorney and client only on a fortuitous basis.

Certain other practical features of the plan should not be overlooked. In the first place, regardless of the competency of the part-time salaried attorney, the union placed practical limitations upon the services to be rendered him by the very terms of his employment. For the "flat" sum of twelve thousand four hundred dollars (\$12,400.00), the attorney was expected to "handle the Workmen's Compensation cases in District 12". (R. 15, f. 18.) These averaged in excess of four hundred and sixteen (416) cases annually, and, as noted, at the low "average" cost of about twenty-five dollars (\$25.00) per case. A similar arrangement had existed between the union and the former attorney. The arrangement strongly implies that the attorney's services were, and were expected to be, "routine" and on a "mass basis."

Further, the plan failed to make adequate provision for timely personal conferences—so vital to active advocacy and proper personal representation. The union did not even insist that the "current attorney" keep scheduled office hours, either at Springfield or at West Frankfort (where most of the miners were).

The plan took no account of problems arising from distances and territory covered,⁴ except in the "re-

⁴The main office of Petitioners, with salaried office personnel, was in central Illinois at Springfield (where the main office of the Illinois Industrial Commission was located). (R. 56.) It was there

verse" sense that the attorney was expected to work from "files" on the basis of information not personally investigated or collated by him.

The plan made no provision for special handling of "difficult" cases, where the sums involved could be substantial—far in excess of the one thousand eighty dollar (\$1,080.00) or fourteen hundred dollar (\$1,400.00) average recovery shown by the record. Yet, it is contrary to common knowledge to assume that no such "difficult" cases existed in a hazardous industry where this union alone had eight thousand five hundred (8,500) active members, and its members' claims filed with the Commission averaged in excess of four hundred (400) a year.

The union did not set up the attorney as an independent entity with separate quarters and staff. Instead, the union maintained an anonymous and, so far as the record shows or implies, an unlicensed "Legal Department." It employed a basic form bearing this caption and strongly suggested that the union itself was attending to compensation matters, though with the aid of its lay personnel and attorney.

that the salaried attorney had duties as a State Senator. (R. 31, 32.) Likewise, his own residence and office for the private practice of law were in the Springfield area, at Taylorville. (R. 41, 57.) The attorney had "assigned" office space in the main office of the union at Springfield (R. 35), and he could use Petitioners' office when he was in West Frankfort (R. 35). Many coal mines are located in southern Illinois, a considerable distance from the Springfield area. Local District 7 was headquartered at West Frankfort, where Petitioners maintained an office with one secretary paid by the union. (R. 56.) Local District 6 was headquartered at nearby DuQuoin, where an unstaffed office was maintained by Petitioners. (R. 56.) Other cities or communities in the area include Herrin, Carbondale and Marion. Local District 4 maintained an unstaffed office at Taylorville (in the Springfield area). (R. 55.)

"Free choice" of counsel, if not discouraged, was not assured. While the attorney himself was under instructions to turn over the "file" when applicant was represented by other counsel (R. 20), in many cases there was no contact between "client" and attorney until the "hearing." In other cases, the contact was after the Application had been filed. Only in some cases was there any contact before the "hearing."

So little was thought of the desirability or need for establishing an independent attorney-client relationship, as contemplated by the 1963 letter of employment, that no separate request or personal contact was deemed necessary. The union form contained no place for such a request. It was "presumed" by the attorney that because a "Report to Attorney" had reached him, the union member desired his services. (R. 39.)

These circumstances, in combination, surely must be sufficient to warrant the conclusion that this particular plan in actual operation was not one whereby the union merely defrayed or contributed to the payment of the fees of an attorney individually chosen by the member. Instead, the union here undertook to practice law through various of its officers, clerks and a part-time salaried attorney. The Court below so held.

It is the constitutionality of that holding which is at issue here, not the propriety of the lower Court's reasoning, not the merits of other materially different

plans for group legal services, and not whether, with proper safeguards and improvements, some other plan was beyond the power of the State to prohibit.

II

THE CONSTITUTIONAL RIGHTS ESTABLISHED BY NAACP v. BUTTON, 371 U.S. 415, AND BROTHERHOOD OF RAILROAD TRAINMEN v. VIRGINIA, 377 U.S. 1, DO NOT INCLUDE THE RIGHT TO OPERATE OR PARTICIPATE IN THE LEGAL SERVICE PLAN SHOWN IN THIS RECORD.

The elements of free speech and assembly loomed so large in the *Button* and *Brotherhood* cases as to render insignificant the incidental solicitation and advertising of legal services upon which Virginia bot-tomed its power to regulate. Those precise rights to consult with one another, and to be advised of the desirability of retaining competent counsel, and of recommending the names of such counsel are clearly recognized by the Court below. (R. 103.)

Moreover, the arrangements in *Button* and *Brother-hood* resulted in the formation of a traditional attorney-client relationship and apparently in highly competent services from attorneys who were special-ists in the fields involved.

There was no showing in those cases, as there is in this record, of so casual, indirect and distant a rela-tionship between the attorney and the claimant as to raise grave doubts that there existed the personal and confidential relationship of attorney-client, or the trust and confidence upon which that relationship

should be founded. The values which flow from that kind of relationship surely are worthy of protection, not only to preserve the obvious advantages to the client, but as a bulwark against the degeneration of the legal profession into a mere commercial enterprise which "might threaten the moral and ethical fabric of the administration of justice." (377 U.S. 1, 6-7.)

In addition, as we have noted, there were other aspects of the plan as it was operated, which are properly matters of state concern: the volume of cases which the part-time attorney was required to handle, the fixed-salary arrangement without regard to the amount of time or effort which the exigencies of the individual claims might require, the extent to which secretaries and union officials participated in giving legal advice and assistance without any substantial supervision by any attorney, absence of any real freedom of choice by the claimant as to who his lawyer would be, the probability that claimants were not in fact receiving adequate representation, and the absence of any safeguards to minimize conflicts of interest which might arise between the union and any particular claimant.

None of these evils was present in *Button* or *Brotherhood* where, indeed, it appeared that alternative methods of securing legal services were either non-existent or less than adequate.

The broad range of permissible state regulation, when these and similar evils are shown, is recognized in *Button* and *Brotherhood*, and in many other de-

cisions of this Court. *Martin v. Walter*, 368 U.S. 25; *Dent v. West Virginia*, 129 U.S. 114; *Graves v. Minnesota*, 272 U.S. 425; *Kovrak v. Ginsburg*, 358 U.S. 52; See *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483; *Ferguson v. Skrupa*, 372 U.S. 726.

Contrary to the suggestions of other *amici*, this case does not involve or affect programs of legal aid to the indigent (which were expressly excluded from the reasoning of the Court below and in no way affected by its decree), the operations of civil rights legal groups, the burgeoning neighborhood law office programs financed by the Federal Government, or the vast variety of multi-party legal representations which differ in material ways from the particular plan of Petitioners that was enjoined by the Court below.

In reviewing the Illinois judgment, it is important to note, *first*, the individual rights sought to be enforced through the part-time salaried attorney employed by the union are state-created rights; *second*, in the creation of such rights, Illinois has carefully provided for governmental agency regulation of attorney's and other fees (48 Smith-Hurd Illinois Ann. Stats. §138.16); for simplicity of procedures (*ibid.*, §§138.16, 138.17) and for waiver of commission fees and charges for needy applicants (*ibid.*, §138.20); *third*, in the creation of such rights, the State has not expressly provided that a labor organization or other group itself may enforce the claims of its members and has required representation by an attorney where the applicant does not "appear" *pro se*; *fourth*, there

is no proof of unavailability of competent members of the Illinois Bar to represent the union members in their claims at a reasonable fee, fixed by the State Commission, or even of unavailability of competent members of the Illinois Bar to undertake such representation for a minimal fee or, in meritorious cases, for no fee; *fifth*, there is no proof that "legal aid" in meritorious cases is not available to eligible union members under legal assistance plans of community action programs under the Economic Opportunity Act (42 USC Sections 2782-2789), and *sixth*, the present record does not indicate that Petitioners made any efforts in the Courts below to suggest any changes in or additions to their salaried attorney plan which might have obviated its objectionable features, apparently being determined to stand on their contention that the plan was constitutionally immune from any regulation whatsoever.

Moreover, if the decree below is affirmed, Petitioners are still entitled, under Illinois law, to seek a modification of the decree at any time upon a factual showing that their legal service plan has been implemented in ways that avoid the difficulties and evils present in the current plan. *Material Service Corporation v. Hollingsworth*, 415 Ill. 284, 112 N.E. 2d 703; *Ill. Central R.R. Co. v. Commerce Commission*, 387 Ill. 256, 56 N.E. 2d 432; c.f. *Field v. Field*, Ill. 2d, 223 N.E. 2d 551.

That some types of regulations are desirable, if not essential, over the almost infinite varieties of plans for group legal services is evident and conceded by

the most fervent advocates of such plans. (See e.g., *Amici Brief of NAACP Legal Defense and Educational Fund, Inc., et al.*, pp. 40-44; *Report of California Committee on Group Legal Services* (1964), 39 Calif. St. Bar Jnl. 639, 723, 733.)

Both the factual and legal predicates for sound relaxation of traditional statutes and rules governing practice of law and attorney-client relationship in civil matters seem far from settled. In California, for example, the 1964 (third) study committee Report made certain specific recommendations. But, at the same time, it recommended a "broad scale survey of the needs of the public for legal services." (39 Calif. St. Bar Jnl. p. 729.) The committee thereafter, with support of the governing body, unsuccessfully sought foundation funds for the survey. To the committee, it appeared there was no basis for limiting the "association" authorized to provide legal services "to particular types of non profit associations or even to non profit associations in general." (*ibid.*, p. 725.) The committee considered that a limitation to legal services of "common interest" to members of the group was difficult of "intelligent definition" and had only "superficial appeal" (*ibid.*, p. 726). In an attempt to solve the "promoter" problem, the committee recommended that "any group which undertakes to provide legal services for its members shall have a bona fide purpose other than the provision of legal services" (*ibid.*, p. 723), (thereby opening the door to associations such as motorists' associations, mutual insurance companies and mutual savings and loan as-

sociations when authorized by their own organic laws). The specific "regulations" would have permitted "availability of legal services, but not the names of attorneys, (to be) used in a dignified manner in soliciting membership in the group" (without further clarification) and would have permitted "the name, address and qualifications of each recommended attorney (to be) announced in a dignified manner to members of the group only." (*ibid.*, p. 724.) The committee recommendations were silent as to many details, e.g., provisions assuring adequacy of legal services, avoidance of "mass handling," precise definition and "holding out" of legal services offered, liability or non liability of employer for negligence or other acts of the attorney, confidentiality of communications and files, right of a member to employ other counsel and restrictions upon outside practice of employed attorneys. Nor was any express recommendation made as to a major problem pointed out by a dissenting member, i.e., the effect of "group plans" upon the Bar generally, in view of present restrictions against solicitation and advertising (*ibid.*, p. 737). The committee alternatively suggested a "certification" method, but outlined no specific standards (*ibid.*, p. 733).

The Report reveals the obvious difficulties and policy questions involved in formulating appropriate regulations, quasi penal in nature, that would govern in the divers and often complex factual situations outlined by the Report. The latest action of the Board of Governors was in May, 1967 when it determined not

to take "any action *at this time* to modify the Rules of Professional Conduct." The assigned reasons were several, but included the pendency of the present case, and pending studies of two committees of the American Bar Association on changes in the Association's Canons of Professional Ethics and availability of legal services. See *Newsletter, State Bar Reports (Calif.)*, May-June, 1967, p. 1; see also 40 Calif. St. Bar Jnl. (1965) p. 325.

Union "referral plans" and union "legal service" plans, of course, are but one segment of an extremely broad subject. This record is a narrow one; it is devoid of evidence, pro or con, on broad factual issues which troubled the California Committee.

The practice in Great Britain is instructive in showing the rationality of regulations designed to maintain the very high ethical standards of the bar in that country, to preserve the values of a true attorney-client relationship, and at the same time, to recognize the laudable and legitimate interests of labor unions, similar associations, and their members in having available adequate legal advice and assistance at an economical price.

In *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1, 7, the Court refers to the practice in Great Britain whereby "unions do not simply recommend lawyers to members in need of advice; they retain counsel, paid by the union, to represent members in personal lawsuits . . ."

The fact is, however, that such practices are very carefully circumscribed, both as to the kinds of mat-

ters which may be financed in this manner and as to the conduct of the barristers and solicitors. Barristers are flatly prohibited from undertaking "to represent any person, authority or corporation in all their court work for a fixed annual salary"; and it is highly doubtful that a barrister could be employed on a salaried basis by a union or other organization. W. W. Boulton, *Conduct And Etiquette At The Bar of England and Wales* (London, 1965), pp. 4-5.

While solicitors are less restricted; nevertheless they are permitted to accept retainers from unions for performance of services to individual members only in limited classes of cases; they may not hold themselves out as willing to do work for union members at a bargain rate, or less than the scale fee; and are subject to very strict rules prohibiting them from allowing unions or others to tout or advertise their services. Sir Thomas Lund, *The Professional Conduct And Etiquette Of Solicitors* (London, 1960), pp. 26-28, 34, 134.

If, as appears clear, some regulation by the states is appropriate to preserve the traditionally high moral and ethical standards of the profession and of the administration of justice, one questions whether this record presents the issues in sufficient breadth or focus to permit this Court to define in a meaningful way, on the one hand, the extent to which Petitioners may be entitled to constitutional protection for some kind of plan involving a salaried attorney to handle the industrial accident claims of their members, and on the other, the scope of state power to impose rea-

sonable regulations on the manner in which such plans may be operated.

CONCLUSION.

For the reasons stated, the Illinois decree should be affirmed or the writ dismissed for want of a substantial Federal question.

Dated: September 15, 1967.

Respectfully submitted,

JOSEPH A. BALL,

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*Attorneys for The State Bar
of California, Amicus Curiae.*

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1967

No. 33

UNITED MINE WORKERS OF AMERICA,
DISTRICT 12,

Petitioner,

vs.

ILLINOIS STATE BAR ASSOCIATION, et al.,

Respondents.

On Writ of Certiorari to the
Supreme Court of Illinois

MOTION OF AMICUS CURIAE FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

Movant The State Bar of California respectfully moves the Court for leave to participate in the oral argument of the within case on the following grounds:

1. A like motion has been made on behalf of the N. A. A. C. P. Legal Defense and Educational Fund,

Inc., and the National Office for the Rights of the Indigent. If permission should be granted for such Amicus, permission should also be granted to this Amicus, whose position on the merits is opposed to that of the other Amicus.

2. This case now comes before the Court following its landmark decisions in the *Button* and *Brotherhood* cases. Determination of the proper scope of the issues herein, and the proper resolution of such issues, present questions of importance to the public, the Courts and the legal profession of this nation.

Wherefore, Movant respectfully prays that leave be granted to participate in oral argument.

Dated: September 15, 1967.

Respectfully submitted,

JOSEPH A. BALL,

JOHN J. GOLDBERG,

SAMUEL O. PRUITT, JR.,

*Attorneys for The State Bar
of California, Amicus Curiae.*

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No. 33.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioner,

v.

ILLINOIS STATE BAR ASSOCIATION et al.,
Respondents.

On Writ of Certiorari to the Supreme Court of the State of Illinois.

OBJECTIONS TO MOTIONS

of

American Federation of Labor and Congress of
Industrial Organizations,

NAACP Legal Defense and Educational Fund, Inc., and
the National Office for the Rights of the Indigent,
and

National Lawyers Guild for Leave to File Briefs as
Amicus Curiae

and

As to Motion for Leave to Participate in Oral Argument
by NAACP Legal Defense and Educational Fund, Inc.,
and the National Office for the Rights of the Indigent.

The Illinois State Bar Association and the individual
respondents, all members of the State Bar's Committee
on the Unauthorized Practice of Law hereby respectfully

object to the motions of the American Federation of Labor and Congress of Industrial Organizations; NAACP Legal Defense and Educational Fund, Inc., and the National Office for the Rights of the Indigent; and the National Lawyers Guild; for leave to file briefs as *amicus curiae* in the instant case. Consent to file was refused by counsel for respondents as to each request. This action of refusal was not capriciously taken by respondents.

REASONS FOR OBJECTION TO MOTION.

1. The interest of the movants extends beyond the issues decided in the Illinois Opinion.

The AFL-CIO clearly demonstrates in its motion that it seeks leave to participate as a **party** to the action. Its discourse under the heading "Interest of the AFL-CIO" on pages iii and iv of its motion, points out that it considers itself in that category. To the same effect is the request of NAACP Legal Defense and Educational Fund, Inc., and the National Office for the Rights of the Indigent, and the National Lawyers Guild.

"An *amicus curiae* is not a party to the action, but is merely a friend of the court whose **sole** function is to advise, or make suggestions to the court." **Clark v. Sandusky**, 205 F. 2d 915; **Klun v. Less**, 43 A. 2d 755.

As ably stated by Mr. Justice Shaw in his additional opinion in the case of **Froehler v. North American Life Insurance Co.**, 374 Ill. 17 at 27:

"Any case decided by this court may vitally affect pending litigation or controversies between other parties, but this does not necessarily justify intervention. Intervention by counsel as a friend of the court is only justified when the intervenor can show that to

protect it in the consideration of the case, such aids seem necessary or advisable."

The AFL-CIO, NAACP, and National Lawyers Guild are endeavoring to thrust their influence as representatives of large Unions and other militant groups upon the deliberation of this Court on a local problem relating only to the United Mine Workers Union, District 12, and the claimed unauthorized practice of law by it in the State of Illinois, and fail in their motions to advise this Court that any of the One Hundred Twenty-Nine Union affiliates or other groups have similar legal arrangements which will be adversely affected by an affirmance of the Illinois decision.

The NAACP Legal Defense and Educational Fund, Inc., and the National Office for the Rights of the Indigent seek to assert its influence as a group who have championed successfully the rights of the indigent in order to enlarge those organizations sphere of influence to middle class problems. Apparently they wish to perpetuate their organizations to fit the day when their struggle has been successful and the Negro is not the indigent as the great majority of his class appears today. It is significant that they are not seeking to help this court reach a decision on the limited factual situation presented in this **mine-workers** appeal, but wishes to coerce this court to enter a sweeping decision to permit "**great experiments**" in the practice of law and to wipe out all rules of conduct, canons of ethics and statutory regulation of the practice of law (p. 33 of their brief). Illinois is not interested in experimenting on such a grand scale with the practice of law. It has moved cautiously in the development of new ideas and, when tried and proven to be beneficial to the public, it has moved forward with zeal. This movant has not demonstrated a right to appear and attempt to influence this Court as an amicus.

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The National Lawyers Guild announces its desire to broaden the base of available legal service, and apparently feels that the magic words, "Group Legal Services" is the prescription to cure all fancied ills prevailing in the legal profession. Nowhere in their brief do they analyze, or in any way consider, the facts which gave rise to the action taken by the Illinois State Bar Association. Instead, they present to this Court, in the guise of an amicus brief, an argument long since made in California and rejected (Appendix A). Because they could not honestly review the limited and local factual situation of the **Illinois Mineworkers** case and apply to it the expansion of Group Legal Services for all, they acknowledge that they resorted to using rather extensively a brief filed with the Board of Governors of the State Bar of California. The matter of concern to California lawyers was a proposed Rule 20 regulating members of the Bar as to a lay agency or other intermediary which intervenes between himself and any client (Appendix B). A review of that brief reveals that the main concern of the signers was that proposed Rule 20 went far beyond Canon 35. To them, it appeared that the rule prohibited mere recommendation by a group or its members of an attorney who represents the group. We do not make any attempt to analyze California's Rule 20, but, it is refreshing to observe that the brief stated:

"* * * the most important respect in which the proposed rule goes beyond Canon 35 is that it appears to proscribe mere *recommendation* (italic theirs) by a group or its members of an attorney who represents the group. This is so, apparently, even though the attorney's compensation is derived exclusively from the referred client and is dependent upon the making of voluntary arrangements directly between the attorney and the referred client. We believe, for reasons stated at a later point in this brief,

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that this effect of the rule is in conflict with the understanding and preference of a vast majority of attorneys both in California and throughout the nation, and may well be unconstitutional. Here it is most relevant to observe that no support for this aspect of the proposed rule can be derived from Canon 35. Thus, Mr. Henry S. Drinker, who was Chairman of the ABA Committee on Legal Ethics when it adopted Canon 35, and was the author of the authoritative treatise, *Legal Ethics*, has stated:

"The Canon does not preclude counsel for a corporation or association from representing its individual employees, patrons, stockholders or members, or groups of them, provided such employment has not been the result of improper solicitation, and provided such relation is personal and direct and the services paid for by the individual client . . ."

To the same effect, see: Unreported Opinion No. 316 ABA Comm. Prof. Ethics, summarized in **Drinker**, *supra*, p. 300; Note, 47 Ill. Bar J. 410, 416:

"Mere referral by an organization of one of its members to an attorney solely because of the organization's belief in the attorneys competence has never been regarded as a breach of the Canons, so long as no financial (i. e. fee-splitting) arrangement exists between the attorney and the organization."

Note, 53 N. W. L. Rev. 276, 279, n. 14:

"No cases can be found which hold that attorneys who accept employment with members of an organization, by virtue of the recommendation of such organization, are violating Canon 35." (Pages 7-8 of Brief in opposition to Proposed Rule 20.)

This California Brief also sets forth the Statement of Policy of the Committee which drafted and recommended passage of Rule 20.¹ It is significant to the Court's consideration of this appeal because it demonstrates the restrictive approach, which is not the Illinois position. It again speaks favorably for the Illinois Supreme Court decision.

Also we find the brief recognizing this fact when it proclaimed:

"We submit that any rule which may operate to proscribe representation by an attorney of persons recommended or referred to him by a corporate or 'organization' client or its members goes beyond common sense. Certainly it conflicts with the practices of the vast majority of lawyers in California and throughout the United States. At the present time, recommendations by satisfied clients probably constitute the most important source of business of lawyers everywhere. This manner of obtaining business has repeatedly and correctly, been approved by the Court. How many lawyers, and what kinds, depend heavily on 'drop-in' business to sustain their practice?"²

¹ 35 California State Bar J. 719-20:

"It is proper that a corporation, organization or group, may retain and employ legal counsel to serve it in any matter in which such organization, corporation or group as an entity is properly interested. Such lawyer shall not have referred to him by the group, either directly or indirectly, an individual member of such group or organization for the purpose of representing such individual member with respect to legal problems concerning his individual affairs. . . . Nor shall the employee who is injured in the course of his employment and files a claim before the Industrial Commission, be referred to the attorney for the Union or any member thereof, because such a claim is not a matter of collective interest to the organization as an entity".

² Brief in Opposition to Proposed Rule 20, pp. 20-21.

The language of that California brief is hardly support for an absolute group legal service plan.

The AFL-CIO stresses that the "question presented by the instant case is whether union members may further their undoubted constitutional right to associate for the purpose of preserving and enforcing their legal rights, by voting to set up a plan whereby funds in the union treasury may be used to pay an attorney to advise and represent such of their number as need his services" (page iii and iv of motion).

To properly respond to this erroneous statement of the issue in this case, we must look to the facts which gave rise to the initial suit for injunction. For a number of years United Mine Workers, District 12, has hired an Illinois attorney to handle Illinois Workmen's Compensation cases of its members on a salaried basis (R. 14-15). At the time of this litigation, one Stuart Traynor was hired in that capacity by the union (R. 14-15). He received for the period January through November, 1964, the sum of \$11,366.68 in salary, and \$1497.60 in expenses (R. 61). His annual salary was \$12,400 plus expenses (R. 61). During a period from October, 1963, to December, 1964, 637 claims filed before the Commission were concluded by payments totalling \$737,968.27 (R. 54). The representation of each Miner was extremely impersonal. He seldom saw his client until the day of the hearing (R. 44). Others fill out the application for adjustment of claim (R. 36) or the report to attorney on accidents (R. 38-41). This latter report contains no language of employment of Stuart Traynor as the injured man's attorney or authority to file a claim (R. 16-17). The claim is concluded either by agreed settlement procedures or by a hearing before an arbitrator on the Industrial Commission staff. The attorney never receives a fee from the injured worker and all settlement drafts from insurance companies went directly to the workers (R. 62).

One can observe from a reading of the facts stated above that we are dealing in this case with a matter of concern to the State of Illinois only. Stuart Traynor is an Illinois attorney practicing before an Illinois tribunal, The Industrial Commission, created by the Illinois Legislature. As an attorney he is subject to the rules and regulations of the Illinois Supreme Court as to the practice of law.³ His activity was brought to the attention of this State Court by this action. The conduct and activity of United Mine Workers of America, District 12, in the State of Illinois, was also reviewed and, relying upon previous decisions of its court and the Canons of Ethics, the Illinois Supreme Court held that the Union's activity and its violation of **state protected rights** (not Federally protected rights, i. e., FELA) was properly enjoined, and the Court's action did not deprive the Mine Workers of any rights to which they are constitutionally entitled (R. 94-105). This is not a matter of universal concern to the AFL-CIO or any of its affiliates because of its local intrastate character.

Finally, the AFL-CIO profess a profound interest in seeing that working men have access to effective counsel. From the record we observe that M. H. Hannegan from January, 1961, until his death, averaged \$1,400 per case recovery, whereas the last attorney, Stuart Traynor, averaged only \$1,150 per case (R. 54, 60). The Union's factual answers to interrogatories answers this argument with mathematical certainty. We find a loss of \$250 per case average. Is this the effective counsel arrangement the AFL-CIO believes is so sacred? The impersonal nature of this representation eloquently demonstrates the need for the action taken by the Bar Association and the decision reached by the Illinois Supreme Court. One cannot claim that the filing of 416 claims in one year and the processing to conclusion of 487 claims in that same period by a person on a salary of \$12,400 is going to assure the working

³ Ill. Rev. Stat. 1963, Ch. 110, Section 101.58-101.59-1.

man that (1) he is receiving effective representation; (2) he is receiving maximum on his claim, or (3) he will not be subverted to other interests during the processing of his matter. The presence of the individual attorney-client relationship is lacking and the public, in this instance—the mineworker, is being made a mere pawn in the greater scheme of things within the labor movement.

2. The AFL-CIO-NAACP Legal Defense and Educational Fund, Inc.; the National Office for the Rights of the Indigent, and the National Lawyers Guild plea for all-out Group Legal Service has no standing in this litigation.

The Illinois State Bar Association questions the sincerity of the respective movants for leave to file Amicus Curiae briefs because of their identity. Each association or group seeking to come into this case has a selfish interest far beyond the basic problem of this Court in its consideration of the facts of this case, which is the protection of the mineworker, and the regulation of the practice of law as it applies to the factual matters which gave rise to the Illinois Supreme Court decision, holding such conduct by **that** Union as the unauthorized practice of law. The hue and cry for This Court's imprimatur in favor of unrestricted and all-encompassing group legal service makes one suspect the motives of the proponents. An examination of the briefs filed readily justifies the considered action of the Respondent in not consenting to their appearance. They desire to ignore, or glibly pass over, the limited factual situation of this Illinois case, and endeavor to convince this court to use their proposals as justification for approval of all variations of so-called group legal services.

To reach such a conclusion This Court must not only sweep aside the facts of the case and the obvious evil Illinois was preventing in the application of the mineworkers salaried lawyer arrangement, but also must ignore the Illi-

nois Courts handling of these problems. In our brief on the merits we have referred to the judicial history in Illinois as to unauthorized practice of law as it applied to associations. At the time of consideration of such cases, the Illinois Supreme Court was confronted with corporations and associations, who were, incidental to their main purpose of existence, supplying members with legal services as if it were a commodity which could be advertised, bought, sold, and delivered.⁴ If the Mine-worker's case had been presented to the Court during that period (1930-1935), it unquestionably would have been rejected. The mere fact that a considerable period of time intervenes before the Illinois Court took any action against the Petitioner is no reason why it now should be given any specific exemption. It has not become an "incident to the union's business."⁵ Illinois has always been

⁴ People ex rel. Courtney v. Association of Real Estate Tax-payers of Illinois, 354 Ill. 102, 108-110.

⁵ **The Chicago Bar Association v. Quinlan & Tyson, Inc.**, 34 Ill. 2d 112, 214 N. E. 2d 771, 774:

"Their preparation is not incidental to the performance of brokerage services but falls outside the scope of the broker's function. **Commonwealth v. Jones & Robins**, 186 Va. 30, 41 S. E. 2d 720; **Washington State Bar Association v. Washington Association of Realtors**, 41 Wash. 2d 697, 251 P. 2d 619."

The Appellate Court opinion, 53 Ill. App. 2d 388, 395, 203 N. E. 2d 131, 135, answer any argument which relies on the existence of the plan for a number of years as being protected as an incident of the businesses of the Union:

"The defendant and these amici curiae have strongly contended that the preparation of these documents has long been done in the usual course of the broker's business and that it has been considered reasonably incident and practically necessary to the conduct of the real estate business. We cannot adopt this 'incident to business' rule as a basis for decision here. Not only do we find no Illinois cases among the exhaustive list cited here that adopts this rule, but also we think this rule is an evasion of the hard core principle of the public interest which must be the basis for deciding whether or not the defendants' actions constituted the practice of law."

in the forefront in protecting the public through the proper regulation of the legal profession, and incidental thereof, the striking down of areas of unauthorized practice. Consideration of unions and their attempts to furnish legal counsel, through various devices or plans, is not new to this Court. This is especially true of the much maligned legal aid plan of the Brotherhood of Railroad Trainmen. One of the Appellate Courts of this State, in 1932, had before it a suit by Joseph Ryan, a regional counsel of the Brotherhood seeking to enforce his statutory lien for fees against the Pennsylvania Railroad pursuant to a contract of employment by which he was retained to prosecute a claim under the FELA for personal injuries.⁶ The record disclosed that the railroad, after receiving this lien notice, secretly settled with the employee. The railroad in defense, claimed that Ryan's contract was invalid and unenforceable as contrary to public policy because: (1) it was solicited by the Brotherhood pursuant to its legal aid program to which Ryan as counsel was a party; and (2) it contemplated fee-splitting with the Brotherhood, because of a portion of the fee had to be paid to the Brotherhood as costs for investigation. This decision discussed the facts which gave rise to the need for a legal aid department, its establishment and the manner of its operation. The railroad attacked the relationship between Ryan and the Brotherhood and the way the injured employee came to be represented as unethical. It challenged the lack of a written contract, loans made to the employee, payment of half salary to a Brotherhood inspector, and the fee-splitting with the Brotherhood as contrary to the public policy of the State. The Court, however, said:

"Intemperate and unwarranted argument cannot obscure a record which clearly shows that the purpose

⁶ Ryan v. Pennsylvania RR, 268 Ill. App. 364.

of the Brotherhood is a worthy one, planned to prevent possible frauds upon its injured members and to aid them in the assertion of their legal rights, and that as a result of that purpose or plan, Meadows, in the instant case, obtained the legal services of a very able and experienced lawyer and at a stipulated fee far below that usually fixed in similar cases. The settlement for \$11,000, almost double the amount offered Meadows prior to the commencement of the action, tends strongly to prove the worth of the plan to the members of the Brotherhood."

Although the subject matter of this suit was not unauthorized practice, it clearly showed the thinking of one Illinois Court toward the legal aid program.

This case did not stop the railroads in their continued harassment of both their employees and regional counsels. They went from state to state trying to develop evidence sufficient to break up the arrangement. They filed suits, whenever they could, seeking to disbar regional counsel. **Bodle, Group Legal Services: The Case for BRT**, 12 UCLA L. Rev. 310-325. This law review article gives an extensive history of the conduct of the railroads and the Association of American Railroads continued oppression of the injured and the regional counsel. It quoted extensively from remarks of the director of its claims research bureau. His intemperate remarks and the actions he directed gave the Brotherhood ample cause to try a unique proceeding in the Illinois Supreme Court. A motion was made on behalf of the Brotherhood for leave to file an original petition for a declaratory judgment.⁷ The motion and petition described certain conduct of the Brotherhood and the lawyers who serve as regional counsel for its legal aid department and requested a ruling

⁷ *In re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391.

that the conduct described was neither illegal nor unprofessional. Upon considering the petition, the court determined that it both formulates and enforces the standards governing the practice of law,⁸ and before any ruling should be made, an investigation into the practices in question should be conducted. The Brotherhood's motion was denied, but the court appointed a former Justice of its Court as Special Commissioner with power to inquire into and take proof of all relevant factual matters and to report the testimony, together with the applicable principles of law, to the Chief Justice. Hearings were then conducted. The Brotherhood, a group of twenty-seven railroad companies, the Illinois State and Chicago Bar Associations participated, by counsel, in these hearings. At the conclusion, briefs were filed by all participants, as well as by the American Bar Association. The Special Commissioner submitted his report and the matter was considered by the Supreme Court. Its decision, returned in 1958,⁹ reviewed the record and the legal aid program of the Brotherhood. While recognizing a policy argument of the Brotherhood as persuasive, the court could not accept the program as it was then operating.

The Court complimented the Brotherhood by laying its troubles on the Court's doorstep, seeking advice. The decision then proceeded to give its views:

- 1) The objective of the Brotherhood in seeking to secure competent legal representation of its members can be accomplished without lowering the standards of the legal profession.

- 2) It may properly maintain and finance a staff to investigate injuries to its members, and may make reports available to the injured.

⁸ *In re Application of Day*, 18 Ill. 73.

⁹ See Note 7; *supra*, Illinois Brotherhood case.

3) It may make known to its members:

(a) The advisability of obtaining legal advice before making a settlement;

(b) The names of attorneys who, in the Brotherhood's opinion, have the capacity to handle such claims successfully.

4) Brotherhood employees may not solicit by carrying contracts for the employment of a particular lawyer, or photostats of settlement checks.

5) No financial connection of any kind between the Brotherhood and the lawyer is permissible.

6) The lawyer cannot pay any amount to Brotherhood or its officers or members as compensation, reimbursement of expenses or gratuity in connection with procurement of a case.

7) The Brotherhood cannot fix the fee to be charged, and

8) Finally, the relationship of the attorney to his client must remain an individual and a personal one.

The court proclaimed that if the above course is adopted it will be possible for the Brotherhood to achieve its legitimate objectives without tearing down the standards of the legal profession. It gave the Brotherhood until July 1, 1959 to reorganize the legal aid department along the lines of the opinion.

The Brotherhood accomplished the changes by April 1, 1959, abolishing its legal aid department and establishing a Department of Legal Counsel. All financial connections between the Brotherhood and its regional counsel ended. No longer did the Brotherhood conduct investigations or advise local lodge officers or regional counsel of injuries which came to its attention.¹⁰

¹⁰ Bodle, **Group Legal Services; The Case for BRT**, 12 UCLA L. Rev. 310-325.

This, then, was the posture of unauthorized practice as considered by the Illinois Supreme Court as it existed under a plan such as the Brotherhood's. It is significant to note that the Brotherhood was under attack by its legal adversary, the railroads and their associations. The Claims Research Bureau of the Association of American Railroads not only fomented their attack on regional counsel, but also, on any lawyer who secured a volume of injury claims against their members. **In re Heirich**, 10 Ill. 2d 357, another Illinois case, commented:

"We are compelled to the conclusion that this proceeding was more than an impartial investigation of unethical practices by a bar association with the sole desire to protect the public and the profession. The record indicates that it was an adversary proceeding between the railroads and one of their antagonists. The time and energy of the railroad devoted to this proceeding might well have been spent in perfecting a code of ethics for railroad claim adjusters and in requiring its observance, for the improper activities of claim adjusters develop the climate in which solicitation of the type complained of in this proceeding may thrive."

"Any investigation that is designed to improve the standing of the legal profession should be encouraged; but such an investigation ought to be by disinterested commissioners of this court and should proceed without financial, or other, support from any interested party."

It is not too difficult to change the organizations the Court is referring to above from the adversary American Association of Railroads to the AFL-CIO, NAACP Legal Defense and Educational Fund, and the National Lawyers Guild to show their interest in developing a gimmick which will insure for each organization an area in which they are the guardians of the legal rights of their mem-

bers and the balance of the legal profession are also-rans. Is their approach so altruistic and unrefutable that they can attack the Illinois State Bar Association and the Illinois Supreme Court as being totally ignorant of what is happening in its State and what is needed there for the protection of the public and the legal profession? The arguments they advance demonstrate a selfish interest in order to convince this Court that Group Legal Services, without more, is the solution to the mythical problem of unavailability of legal service for all.

Illinois is more perceptive than these adversaries in viewing the local problem confronting it. Its concern is far more likely to have its effect upon the protection of the public and the legal profession than the open-door approach of the unions and militant organizations who seek to file briefs herein.

In deciding the **Illinois Mineworker's** case, the Supreme Court had before it an association who would not listen to the advice and plea of the Committee on Unauthorized Practice to drop their salaried lawyer arrangement and substitute a department of legal counsel, similar to the Brotherhood; or, to make known to the injured member (1) the advisability of obtaining legal advice before making a settlement, and (2) the names of attorneys who, in the opinion of the United Mine Workers, District 12, are highly competent in the compensation field and have the capacity to handle their claims successfully.¹¹ Instead they chose to continue their salaried lawyer arrangement, which left no recourse to the Committee, and the State Bar, but, to seek to enjoin the practice.

As we have stated in our brief on the merits, the Committee and the State Bar were aware of the decisions in **Button** and **Virginia Brotherhood**, and found nothing in those opinions which gave the stamp of approval to the

¹¹ See Note 7, *supra*, Illinois Brotherhood case.

Mineworkers salaried lawyer arrangement. On the contrary, each case, properly considering only the facts before that court, indicated there was "no compelling State interest" involved which would have precluded them from applying First Amendment guarantees.

In discussing the problem with which they were confronted in **Button**, the court said:

"In the context of NAACP objectives; *litigation is not a technique of resolving private differences*; (italics supplied) it is a means of achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. *It is thus a form of political expression*, (italics supplied.) Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the Courts. Just as it was true of the opponents of New Deal legislation during the 1930's, for example, no less is it true of the Negro minority today. And under the conditions of modern government, litigation may well be the sole practical avenue open to a minority to petition for redress of grievances." (371 U. S. 429.)

"We need not, in order to find constitutional protection for the kind of cooperative, organizational activity disclosed by this record, whereby Negroes seek through lawful means to achieve legitimate political ends, subsume such activity under a narrow, literal conception of freedom of speech; petition or assembly." (371 U. S. 430.)

* * * * *

"The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms." (371 U. S. 438.)

The State statute which **Button** struck down cannot be equated with the United Mine Workers salaried attorney plan, the extent of and the manner in which his services were rendered. This, rightfully, was the concern of the Illinois court, and it rendered the only justifiable decision in the public interest.

The **Virginia Brotherhood** case, involved Virginia's attempt to strike down the Brotherhood arrangement, undoubtedly aided and encouraged by the Association of American Railroads.¹² The Virginia Court and its state bar association refused to accept Illinois' decision limiting the plan adopted by the Brotherhood, to recommendation of competent attorneys, and, chose instead, to attack the Regional Counsel plan as solicitation of legal business and the unauthorized practice of law in Virginia. The part of the injunction granted by Virginia which Brotherhood objected to and sought relief in the U. S. Supreme Court enjoined it:

"* * * from holding out lawyers selected by it as the only approved lawyers to aid the members of their families; * * * or in any other manner soliciting or encouraging such legal employment of the selected lawyers; * * * and from doing any act or combination of acts, and from formulating and putting into practice any plan, pattern or design, the result of which is to channel legal employment to any particular lawyer or group of lawyers." (377 U. S. 4.)

After the Brotherhood acknowledged that this particular practice was part of their services, the Supreme Court held that railroad workers, as part of the First Amendment guarantees of free speech, petition and assembly, have the right to gather together for the lawful purpose of helping and advising one another in asserting the rights

¹² See Note 10, *supra*.

Congress gave them in the Safety Appliance Act and the Federal Employer's Liability Act. They have the right to consult and talk together, and to select a "spokesman from their number who could be expected to give the wisest counsel. This is the role played by its members who carry out the legal aid program".¹³ (Emphasis supplied.) Considering the State's right to regulate the practice of law within its border, after quoting from the **Button** case on this subject, the Court said:

"In the present case the State again has failed to show any appreciable public interest in preventing the Brotherhood from carrying out its plan to recommend the lawyers it selects to represent injured workers."¹⁴

The decision in **Virginia Brotherhood**, putting aside the constitutional argument in support of its decision, results in nothing other than an approval of the limitations placed on the Brotherhood by the Illinois Supreme Court in **In re Brotherhood of Railroad Trainmen**.¹⁵

In the **Mineworker's** decision, Illinois was applying its ruling in **In re Brotherhood** to the facts of that case, and considered both **Button** and **Virginia Brotherhood**, finding them not restrictive of its ultimate decision.

3. The pleas for Group Legal Service do not find support in true and effective surveys of the public.

Throughout the years, the Courts and the Bar Association have expressed their objection to the absolute form of Group Legal Service because of three undesirable con-

¹³ **Brotherhood of Railroad Trainmen v. Virginia**, 377 U. S. 1, 4.

¹⁴ See Note 13, above.

¹⁵ 13 Ill. 2d 391.

sequences. They are: (1) possible harm to the client from the attorney serving the conflicting interest of the client and the organization; (2) destruction of the direct attorney-client relationship through the presence of the association or organization, and (3) commercialization of the profession.¹⁶ The importance of the intimate attorney-client relationship should not have to be spelled out, but our adversaries are so impressed with other facets of their cause that they overlook one of the major stumbling blocks to the absolute plan they champion. This intimate relationship is important for two reasons. It enables an attorney to serve his client more efficiently because the personal contact increases the lawyer's awareness of his client's individual legal requirements, and, this close association increases the laymen's trust in and respect for the legal process.¹⁷ It is conceded that there are many legal transactions that do not need close personal contact, but when the lawyer is dealing with the man's personal injury, the cavalier approach of the mineworker's union and the lawyer to the individual is not only much to be desired, but leads to inadequate representation. If the decision had been in favor of the Mineworker's Union, the Illinois court would have been subject to the deserved criticism from both the bench and bar, and the public, as well.

The approval of absolute group legal services would open the door to commercialism of the legal profession in the ultimate. The bar and public would not only be

¹⁶ 72 Harvard L. Rev. 1334, 1337 (1959).

¹⁷ 72 Harvard L. Rev. 1334, 1339-40.

Missouri Bar-Prentiss Hall Survey (1963), p. 75:

"Substantially all of the suggestions indicated the lawyer had not taken enough time with his client to discuss with the client fully . . . the problems, and the plans for their solution and the progress of the matter."

confronted with such services rendered by unions, and militant groups, altruistic though they may be, but also by many organizations and associations whose members could well afford their own lawyer for the protection of their interest. Would this court want to open the door to the American Manufacturers Association, Airline Pilots Association, Truckers Association, Aircraft Owners and Pilots Association (AOPA), national, state and local chambers of commerce, and national, state and local associations of real estate boards? These are but a few of the many organizations whose existence is justified by the overall good they can render to the industry or profession of their members. Are the courts going to allow the law firm who is handling the organizations' legal problems to take on, as a part of membership dues, their individual legal matters?

A ruling of this court reversing the Illinois decision can only reach the above result in practice. What happens to the legal profession then? What happens to the public? Are the complicated matters of the corporate, associational members bound to receive the highest type of legal service? Is there any assurance that the attorney or firm selected by the association is competent? What of the obvious dangers in that posture of conflict of interest? The lawyer may be required to represent two separate organizations, who belong to the same group, but whose interests are adverse. Does he have to disclose such conflict? What control has the bar and the courts over that attorney? The answers are obvious. The result is chaos for the public and the profession. The attached plugger or pamphlet (Appendix C) is an example of the type of advertising which some lawyers will engage in to acquaint the member of the organization with their services. Nothing could be more unethical. What happens to the lawyer who has no union or association as clients? It cannot be foreseen that the salutary prohi-

bition of the Canons of Ethics on advertising is to be cast aside. Yet, where else does the profession go, if the above is countenanced and became standard procedure with that group lawyer? Is the law profession to be commercialized? Is the practice to be reduced to hawking our individual wares in the market place? Must each lawyer or law firm hire a public relations expert to extol his competency? Must a lawyer stoop to that level in order to make a living? We readily admit that there are some among us whose prowess is extolled in the newspaper, and on radio and TV, and probably reap a harvest of business as a result, but that is not the conduct of the more responsible members of the Bar, and it is hoped that the profession does not lower itself to permit such conduct by all. Such a result is upon the horizon if group legal services, as advocated by the proponents, is permitted.

Many of the proponents of group legal service advocate advertising in various ways. They must admit that information of the availability of the salaried union or group attorney to the members is the most intimate form of advertising (Appendix C). To what extent would they permit the lawyer not representing such groups to announce to the public his competence. They say, perhaps, he ought to be allowed to list his specialty, to have Boards qualify him. Is the profession to establish boards to test the competence of the union or association attorney? "Of course not," will be their answer. "We already do this work and be brook no interference. You find your own niche and leave us alone." Will they be left alone? One can foresee the infighting that will develop over such representation. We fully recognize that modern times needs a reappraisal of Canon of Ethics, which is going on right now within the American Bar Association. However, the day has not arrived or, it is hoped it never will come to pass, that all Canons of

Ethics and all ethical conduct are subordinated to the interest of a few who claim constitutional safeguards not needed by the many, and questionably available to the few. What would happen to the state courts power to discipline attorneys and enjoin organizations involved in unauthorized practice? Will there be an area of unauthorized practice left? The formation of organizations in the past to do legal services as an incident of their main purpose is not justification for a sweeping revision of the practice of law.¹⁸ The Bar Associations, their committees on unauthorized practice and their Ethics Committees have worked with this problem for the protection of the public. The American Bar Association has worked diligently to prevent abuses by setting up conference committees with the offenders. The lines of demarcation between the practice of law and the operation of businesses are carefully drawn and controlled within proper areas. The Chicago Bar Association and Illinois State Bar Association have been particularly effective in this regard.¹⁹ For a number of years, the firm of Quinlan & Tyson, Inc., in Chicago, has been conducting a real estate business and, as an incident thereto, has permitted their employees to prepare various legal documents including deeds, mortgages, examination of title papers and giving advice concerning the status and validity of title. Around 1960, the Chicago Bar Association, and its Committee on Unauthorized Practice sought to enjoin that firm from this legal activity. Local and state real estate boards, and the Illinois State Bar Association were permitted to come in as Amicus Curiae. The matter was referred to

¹⁸ See Note 5. Quinlan & Tyson case quotes, *Rhode Island Bar Ass'n v. Automobile Service Assn.*, 55 R. I. 122, 179 Atl. 139; *Arizona State Bar v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 366 P. 2d 1.

¹⁹ *The Chicago Bar Association v. Quinlan & Tyson, Inc.*, 34 Ill. 2d 112, 214 N. E. 2d 771, 53 Ill. App. 2d 388, 203 N. E. 2d 431.

a master and voluminous testimony taken. The master found that the completion of the forms was a service which sets forth legal rights and liabilities of parties, required legal skill, knowledge and was not incidental to the real estate business and, therefore, was the unauthorized practice of law. The Chancellor affirmed these findings, except that the real estate broker may prepare offers to purchase or sell and secure signatures thereon. The Appellate Court, however, held to the strict interpretation of Unauthorized Practice, and prohibited the preparation and execution of the buy and sell agreement. Quinlan and Tyson, Inc. appealed to the Supreme Court, and that court, again showing its liberal, but protective thinking on the subject of unauthorized practice, held that the Appellate Court's opinion was too broad and permitted the broker to draft the buy and sell agreement.²⁰

This decision, naturally caused much concern with the real estate people, and, at first, created much ill will. However, in order to fulfill the obligation to the public, a combined committee of the Illinois State Bar Association and the Chicago Bar Association was formed to meet with a similar committee from state and local real estate boards. As a result of meetings of this joint committee a Real Estate Broker-Lawyer Accord was prepared and adopted by both factions.²¹ At the present time this accord is being enforced voluntarily by a smaller joint committee which hears and decides complaints. The successful manner in which this very touchy and difficult problem was handled from its inception is a credit to the Bar and Judiciary of Illinois. It demonstrates rather clearly that Illinois can see both sides of the coin and works diligently to reach accords or decisions which will reflect modern views.

²⁰ See Note 19, supra.

²¹ Illinois Bar Journal, Vol. 55, pp. 284-291 (1966).

The proponents say that legal services are not available to the middle class because there is no way for them to know that they need legal services or who they should hire. They believe the cure for all these ills is the group legal service concept. After all, their members will know by the notices, pluggers and pamphlets sent them where to go. This is no argument in support of their plan. Anyway, the picture is not as black as they paint it.²² Many Bar Associations, including the Illinois State Bar Association, have extensive and expensive public relations programs to bring the need and the availability of legal service to the attention of the public.²³ In Illinois, daily spots are used by radio and TV stations explaining many legal problems. It is the exception, and not the rule, in Illinois that an individual cannot obtain legal services or does not know it is available. Also, the proponents claim that the cost of legal services is beyond the reach of many. They cannot be serious unless they ignore the many times each has been consulted about a legal problem and, regardless of the time expended, has charged no fee, or one commensurate with the ability of the client to pay. We need not delve on contingent fees, a most satisfactory means of receiving competent legal service.

The writers on the subject of group legal services consider (1) the need of legal services for the poor, (2) the existence of unauthorized practice by many; (3) the alleged **Button** and **Brotherhood** cases support (4) casualty

²² Missouri Bar-Prentiss Hall Survey (1963).

²³ Illinois Bar Journal, Vol. 54, p. 990 (1966); Illinois Bar Journal, Vol. 56, p. 78 (1967).

The later report on public relations relates that a survey of the radio and TV spot announcements of programs prepared by Illinois State Bar Association Committee on Public Relations would, according to advertising rate books, require an expenditure of \$576,320.00; yet, it is put on radio and TV without expense to the bar as a public service.

insurance companies method of hiring legal counsel and (5) because it has been demonstrated that the poor need legal services, it follows that all classes except the upper middle class and the wealthy must also need these services brought to them through a group.

What about these charges of need? No one doubts that the poor have needed legal services and that it should be made available to them. The Federal Government through O. E. O. programs is rapidly remedying this need. Illinois has fully recognized this in its opinion when it stated:

"It is manifest, we believe, that these factors all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties. *We, of course, do not deal here with the totally different case of a salaried lawyer for indigent clients*" (italics supplied) (R. 102).

* * * * *

"Nor do we think that his right so to do is impaired in a constitutionally objectionable sense unless it can be said that reduction in the net dollar amounts remaining to him from the injury award after payment by the member of his attorneys fees is a constitutionally impermissible impairment. *Such it might be were we dealing with indigent claimants* (italics supplied), but we are not, and the net effect upon the union member differs not at all from that upon other injured citizens" (R. 105).

We have elsewhere discussed the impact of unauthorized practitioners on the public and the work of the bar and, in particular, Illinois with such problems. This is being effectively handled and is not a good ground for the cry of need made here. It must be remembered that the organized bar does not go out of its way seeking to find those en-

gaged in unauthorized practice, but maintains a committee to consider any charge, if made to it. Perhaps that is why some areas of unauthorized practice still exist. If the proponents are so disturbed that the bar and the courts are not protecting the public and the profession, should they not bring the specific charges of unauthorized practice to the attention of the proper committee, rather than state that because there exists some elements thereof, a fortiori the bar is not fulfilling the needs of the public?

Our position on the effect of the **Button and Virginia Brotherhood** case is well known, by now, to This Court. There is no sanction in those opinions to an absolute group legal service plan.

We have also endeavored to answer the casualty insurance argument. When one pays a premium to a company for it to defend any suit and pay any judgment rendered against him, the relationship is anything but group legal service. The insurance company has a substantial pecuniary interest in obtaining the best legal representation available and, obviously, has the right to choose its counsel. The insured's interest only comes into play when the amount of the coverage is not as large as the demand made, and, if the excess demand reflects the actual injury received. Then, and only then, the insured has a personal interest. Often this interest is more illusionary than real.

Finally, we are confronted with statements of need to certain elements of the populace without any statistics or reputable surveys to support the arguments.

The Missouri Bar-Prentiss Hall Survey, entitled "A Motivational Study of Public Attitudes and Law Office Management" (1963), is a real attempt to arrive at answers to many problems of the legal profession. Among the facets of the practice that was studied was the availability and adequacy of legal services. In this connection, the announced objective (p. 43 of Survey) was "to determine the public opinion concerning the availability of legal

services with regard to the number of lawyers in the community and to determine the profession's impression as to the adequacy of legal services, and how more or fewer lawyers would affect it." Of the persons interviewed who use attorneys, 19 per cent believed there were too many attorneys; 64 per cent, about the right number; and 19 per cent, too few. **However, none of them felt it was difficult to retain an attorney.** The Survey conclusion on this point (p. 46) was:

"A substantial majority of lawyers as well as laymen users and non-users feel that the public is securing adequate legal services (as to number of lawyers and quality of service) and that in most communities the supply of lawyers is about right. If there is any need for change in the number of attorneys, it is for more rather than less."

"Greater public education is necessary to inform the layman concerning the need for and method of obtaining competent legal advice . . . There is a need for extension of legal aid and lawyers referral services in some sections of the state."

The conclusions reached in this Survey, which was competently organized and accomplished, tend to negate the claim of the proponents and should have a profound effect to warn against any change in the practice and the canons of ethics.

In meeting the proponents' argument on group legal services, it is necessary to comment on the State Bar of California Progress Report of the Committee on Group Legal Service, dated July 30, 1964.²⁴ It is referred to quite often in both the AFL-CIO and NAACP briefs filed with their Motion for Leave to Appear as Amicus Curiae. The Report as submitted to the Board of Governors of the State Bar of California is rather voluminous. However, much of it is a recitation of the activities of its two prede-

²⁴ 39 Cal. State B. J. 639 (1964).

cessor committees. It considers much of the writings referred to by the AFL-CIO and NAACP, and discusses some California experience with variations of group legal services. Although the majority of the committee recommended that some form of group legal services be adopted, they carefully put restrictions which, if followed, would nullify the result desired.²⁵ This is particularly true in the Mineworkers situation, as most of the restrictions relate to the element Illinois found bad with the plan.

In conclusion the Report stated:

"We should add that we have also determined that there is a substantial need to find better ways for clients to obtain lawyers who have experience in the fields of law which are involved in their particular problems..."

"We have started with the assumption that our primary concern is that the public be provided legal services where they are needed. We are convinced

²⁵ Page 56 of Report:

1. Any group which undertakes to provide legal services for its members shall have bona fide purposes other than the provision of legal services; it shall not be organized solely or primarily for this purpose;

2. There shall be no group control over the attorney selected by the group in areas usually reserved for the attorney or the client;

3. There must be no kick-backs, direct or indirect, between any attorney and an organization which conducts a group type legal service plan;

4. There must be scrupulous observance of all rules prohibiting representation of conflicting interest;

5. In any arrangement whereby an attorney is recommended or selected by a group to represent its members, the following restrictions on advertising shall control:

a) Availability of legal services, but not the name of the attorneys, may be used in a dignified manner in soliciting membership in the group;

b) The name, address and qualifications of each recommended attorney may be announced in a dignified manner to members of the group only.

there is such a need and that group legal services provide a vehicle which, subject to the restrictions we have urged, can properly fill this need. This Committee strongly urges that a continuing effort be made to finance the survey of public needs (described in Appendix A) and the experimental program involving Lawyers Reference Services (described on pages 43 to 46)"

In Appendix A, the Committee states:

"In addition to the information which has been previously summarized, the Committee desires further light upon the problem by obtaining a broad scale survey of the needs of the public for legal services. Such a survey would disclose more precisely the extent and nature of the existing public need for legal services . . ."

The minority reports of Arthur H. Connolly, Jr. and Frank Simpson III highlights some of the additional deficiencies in the Committee's recommendation.²⁶ Mr.

²⁶ Excerpts from minority report of Arthur H. Connolly, Jr.:

"While in my own opinion the Committee majority falls into error in confessing a certain public demand for group type legal services with a proven public need for such services justifying major revisions in our professional standards, the more far reaching and basically unfair result of the recommendations concerns the flat and open discrimination against the great majority of lawyers who might be unable, or perhaps disinclined, to make the required "arrangement" with a lay group. The "non-group" lawyer would be required to adhere to the present strict rules of professional conduct, while their more fortunate brethren at the Bar would reap the obvious benefits of advertising, active solicitation, and channeling. In my view, a double-standard in the area of professional ethics is a concept which would be of great disservice to both the Bar and the public . . ."

Excerpts from Minority Report of Frank Simpson III:

"Consequently, when the majority of the Committee recommends changes in the Rules of Professional Conduct in order to accommodate group legal services, it is not talking about all group legal services, but only about those

Simpson relates the attempt to secure funds from the Ford Foundation to finance a survey to determine the extent of the public need for group legal services. He, rightfully, reasons from that refusal that it is significant evidence that the problem, if one really exists, is far from pressing.²⁷

that would run afoul of the Rules as they now stand. This being so, the question is not whether the functional utility of group legal services in general is sufficiently compelling to require changes in the Rules but rather whether the functional utility of those types of group legal services possessing the forbidden attributes is sufficiently compelling to require changes in the Rules.

* * * * *

"There is still another reason why, in the opinion of the undersigned any proposal to change the Rules to permit presently unpermitted group legal services should receive a long, hard look. And that is the existence of evidence that certain groups, primarily unions, are not entirely altruistic in their support of group legal services, but instead see them as tools of self-aggrandizement rather than enhancers of the public weal. If this is true, it blunts the major (or "public interest") argument in favor of group legal services; that it probably is true was not only recognized by the California Supreme Court in **Hildebrand v. State Bar**, 36 Cal. 2d at 510 (1950):

"... such services (i. e., the BRT's legal service to members) would reasonably constitute an inducing cause for attracting membership in the Brotherhood and the payment of dues thereto."

but also was clearly spelled out in the October 9, 1959 staff memorandum to the California Director of the Agricultural Workers Organizing Committee (AFL-CIO) dealing with how "to organize a target quota of 150,000 agricultural workers in California":

"V. The Educating and Servicing of Community Groups.

a. This is a continuous, volunteer organizer and rank and file operation.

b. It aims at minority groups and community penetration by making the union indispensable in their lives through:

1. Aids in securing welfare, medical and legal aid, housing, etc. (Emphasis added).

²⁷ 39 California State Bar J. 639; Missouri Bar-Prentiss Hall Survey (1963).

Upon presentation of this Committee Report and a progress report submitted in 1966, the Board of Governors of the State Bar of California, at its meeting in May, 1967, considered said report, rejected the recommendation as to group legal services therein contained, and discontinued the Committee from further work on the subject (Appendix A).

Probably the more glaring deficiency in the plea of the proponents on the need for group legal services is that they have not gone into the subject in depth, they have not considered or suggested what canons of ethics are to be changed or how they are to be changed or eliminated, or recommended any restrictions or guideposts to accomplish the result desired. Could it be that they fear to enter into the subject in depth, because it will enlighten the Court as to the deficiencies of an absolute group legal service plan? They are seeking to rewrite the Canons of Ethics. This is a job for the whole spectrum of the legal profession, both bench and bar.

A consideration of an absolute group legal service plan, as proposed, is neither warranted from the facts of the instant case, nor is it a matter of urgency requiring the Supreme Court to adopt the principle as a part of its opinion to be rendered in this cause.

CONCLUSION.

The motions of the American Federation of Labor and Congress of Industrial Organizations, the NAACP Legal Defense and Educational Funds, Inc., and the National Office for the Rights of the Indigent and the National Lawyers Guild for leave to file briefs as Amicus Curiae should be denied. It is further urged that the additional motion of the NAACP Legal Defense and Educational Fund, Inc. and the National Office for the Rights of the

Indigent for permission to participate in oral argument,
also be denied.

Respectfully submitted,

BERNARD H. BERTRAND,
234 Collinsville Avenue,
East St. Louis, Illinois,
Attorney for Illinois State Bar
Association, and Members of
Its Committee on Unauthor-
ized Practice of Law.

APPENDIX.

APPENDIX A.

Board of Governors Meeting at Los Angeles, California on May 17, 18, 19, 1967.

Upon motion made, seconded and adopted, it was

Resolved, upon further consideration of the 1964 published report (39 State Bar Journal 639), and the 1966 Progress Report of the Committee on Group Legal Services, that the Board takes the following actions:

(1) Reaffirms its concurrence in the conclusions of said Committee that (a) the legal profession must discharge its responsibility to provide all citizens with legal services and (b) it is an obligation of the organized bar to ascertain whether the public needs for legal services are being fulfilled and to devise or approve methods by which such needs may be met.

(2) States again its recognition of the necessity that The State Bar of California, its members, and all local bar associations in California actively develop more efficient legal aid and lawyer reference services, including panels of qualified specialists; that they take cognizance of and assist in the efforts of the federal government and others to furnish legal services to the poor, and notes that effective assistance to those efforts has been and is being given.

(3) Accepts the two conclusions on page 724 of the published 1964 report of the Committee to the extent that they state the holdings of the United States Supreme Court in **Brotherhood of Railroad Trainmen v. Commonwealth of Virginia, ex rel. Virginia State Bar**, 377 U. S. 1 and **N. A. A. C. P. v. Button**, 371 U. S. 415, but concludes that it is not in the public interest or in the interest of the administration of justice to apply the prin-

ciples of those decisions to plans for furnishing group legal services in derogation of certain of the Rules of Professional Conduct which were adopted as public safeguards, and which Rules will, except as they conflict with said Supreme Court decisions, continue to be enforced.

(4) Declines to take any action at this time to modify the Rules of Professional Conduct to permit the establishment of any method of furnishing legal services to any person or group of persons which is not now permissible under said Rules and said decisions for the reasons hereinabove mentioned and for the following additional reasons:

(a) The recent and continuing growth, development and expansion in California of legal aid and similar services, including those established under federal programs, in conformance with the Rules of Professional Conduct, lead to the conclusion that this type of institution is more suitable than would be various private groups in meeting the needs of the poor for legal services.

(b) The recent and continuing growth, development and expansion in California of lawyer reference services are providing increasingly the means by which persons in need of legal services competently provided by members of the State Bar may obtain the same in greater measure.

(c) It would be premature to take such action in view of:

i. The pendency before the United States Supreme Court of a case (**United Mine Workers No. 12 v. Illinois State Bar Association**) involving issues relating to the furnishing by an organization to its members the services of a lawyer. It

is believed that the opinion of said Court therein when rendered may qualify or clarify certain of the principles announced by it in the **Brotherhood** and **Button** cases, *supra*.

ii. The reconsideration of the Canons of Professional Ethics of The American Bar Association by a committee of that Association and the study being conducted by that Association's Committee on the Availability of Legal Services. From these studies will come, it is believed, additional information pertinent to the matter of furnishing legal services.

iii. The pending studies by State Bar committees concerned with (a) legal aid and lawyer reference services and (b) a system for the development of specialization in the bar and the public recognition of specialists generally and in lawyer reference services; and it is

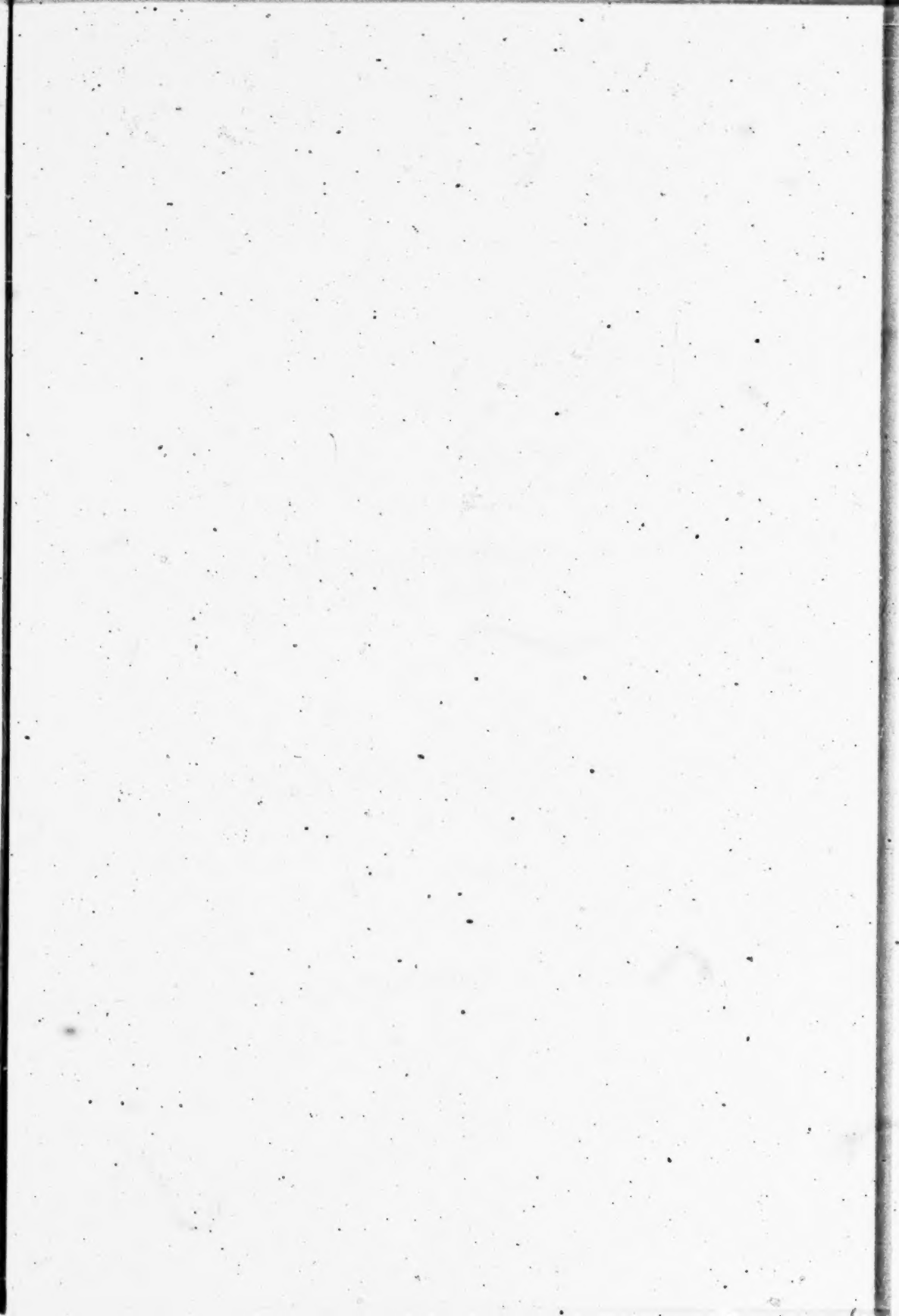
Further Resolved that the members of the Committee on Group Legal Services, past and present, hereby are commended for their outstanding effort and thought in their sincere consideration of the significant matters they undertook to study and for the thoroughness and depth of their reports which have contributed in a noteworthy manner to the significant literature dealing therewith; and it is

Further Resolved that in view of the conclusions and decisions of the Board hereinabove set forth, said Committee on Group Legal Services hereby is discontinued with thanks and appreciation for the excellence of its service to and its efforts on behalf of The State Bar of California, its members and the public.

APPENDIX B.

Proposed Rule 20.

A member of the State Bar shall not permit his professional services to be controlled or exploited by any lay agency or other intermediary, personal or corporate, which intervenes between himself and any client. A member of the State Bar shall avoid all relationships by which the performance of his duties may be directed by or in the interest of such intermediary. A legal aid association or society approved by the State Bar, rendering charitable legal assistance, shall not be deemed to be such lay agency or other intermediary within the meaning of this rule. A member's responsibilities and qualifications shall be and are individual. A member's relation to his client shall be personal and his responsibility shall be direct to his client. A member of the State Bar shall not accept professional employment by any association or other organization to render legal services to the members of such association or organization in respect to their individual affairs, nor shall he enter into with any such association or organization, any arrangement having for its purpose or one of its purposes the rendition of such legal services. This rule shall not prohibit acceptance by a member of the State Bar of employment from any such association or organization to render legal services in any matter in which the association or organization, as an entity, is interested when the subject matter will affect the association or organization as an entity.



APPENDIX C.

OFFICERS 1966

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 Vice President
 Department of Labor Relations
 Vice President
 Department of Association Affairs
 Vice President
 Department of Chapters and Councils
 Vice President
 Department of Governmental Affairs
 Vice President
 Department of Information, Education and Research

President, Chapter
 Chapter
 Chapter

STAFF

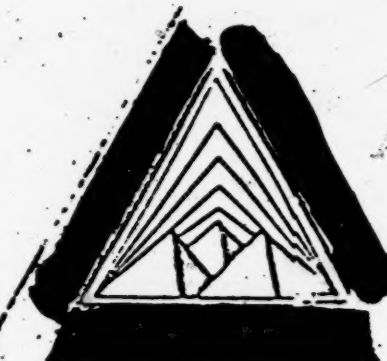
Executive Vice President
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THE CHAPTER

When legal problems arise, are you prepared to meet them?

Having a law firm on retainer is a definite asset in today's business world. However, it is costly and probably beyond the reach of the average member. Members are fortunate in this regard in view of the services rendered by the law firm retained by the Association.

The firm consists of five men whose function it is to assist members with their legal problems. The firm of [redacted] is primarily involved in matters pertaining to [redacted] and [redacted] law. Two of the men are licensed [redacted] one a [redacted] and one the Author of the book [redacted].

A most valuable service rendered by the firm is the convenient and prompt handling of legal questions on the telephone. In many cases the attorneys will check into involved matters and call members back with the answers. The great advantage in this service is the knowledge that all matters are handled by experts in the field, who are constantly in touch with [redacted] and [redacted] law. The bulk of the questions involve the interpretation and performance of contracts. Frequently legal advice is needed where a [redacted] makes a mistake [redacted] or he may want information on how the penalty clause works in a contract. In other cases [redacted] seek advice as to their rights when an [redacted] refuses payment or orders [redacted] for which there is no provision in the contract. These are typical questions answered daily by the [redacted] legal advisors, and for which there is no charge.

Another very important service involves the contract forms printed by [redacted] and distributed to members. These forms are prepared by the attorneys and from time to time are revised and reviewed to determine their fairness. [redacted] have avoided many costly pitfalls through their use.

When [redacted] disputes reach a stalemate, [redacted] attorneys can be of real service to [redacted]. The [redacted] form calls for arbitration in settling disputes and valuable arbitration services are rendered by [redacted] attorneys. The arbitrator is appointed by the [redacted] and his awards are reviewed by [redacted] attorneys to determine their legality and enforceability. Arbitration has proven its worth over time consuming court actions in resolving contract disputes.

The firm of [redacted] also has an educational function. Lectures and programs are presented concerning construction and real estate laws and interspersed are questions and discussions from the floor.

In reference to State Legislation involving the [redacted] industry the [redacted] is represented in [redacted] by the law firm to help protect the interest of [redacted]. The attorneys concern themselves with laws pertaining to [redacted] [redacted] and [redacted] proposed by the State.

And to keep members abreast of the times an article is written monthly by the law firm for the [redacted]. The article usually clarifies and interprets new laws and new cases of interest to [redacted].



UM
 OF
 LEGAL ADVISORS
 TO THE



In short, the [redacted] legal services have in effect helped keep job costs down by:

- ✓ resolving legal questions promptly on the telephone for members.
- ✓ providing professional and workable contract forms for members.
- ✓ having available that all important arbitration service when disagreements arise.
- ✓ informing members on their legal rights through courses and programs.
- ✓ affording members a voice in [redacted] in the consideration of laws affecting their business.
- ✓ keeping members aware of the latest in construction law to help them avoid costly mistakes.

These services are proving their worth constantly in keeping job costs down. As a member of [redacted] they are yours as a matter of course.

"It's Great to Know You Belong."

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No. 33.

JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioner,

vs.

ILLINOIS STATE BAR ASSOCIATION, an Illinois Not for Profit Corporation; CURTIS F. PRANGLEY, BERNARD H. BERTRAND, WILLIAM FECHTIG, KOREAN MOVSISIAN, HENRY W. PHILLIPS, WILLIAM C. NICOL, JOHN W. HALLOCK, WATTS C. JOHNSON and MARSHALL A. SUSLER, Individually and as Members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association,
Respondents.

On Writ of Certiorari to the Supreme Court of the State of Illinois.

BRIEF OF RESPONDENTS

**Illinois State Bar Association and Its Individual Members
of the Committee on Unauthorized Practice of Law.**

BERNARD H. BERTRAND,
234 Collinsville Avenue,
East St. Louis, Illinois 62201,
Attorney for Respondents.

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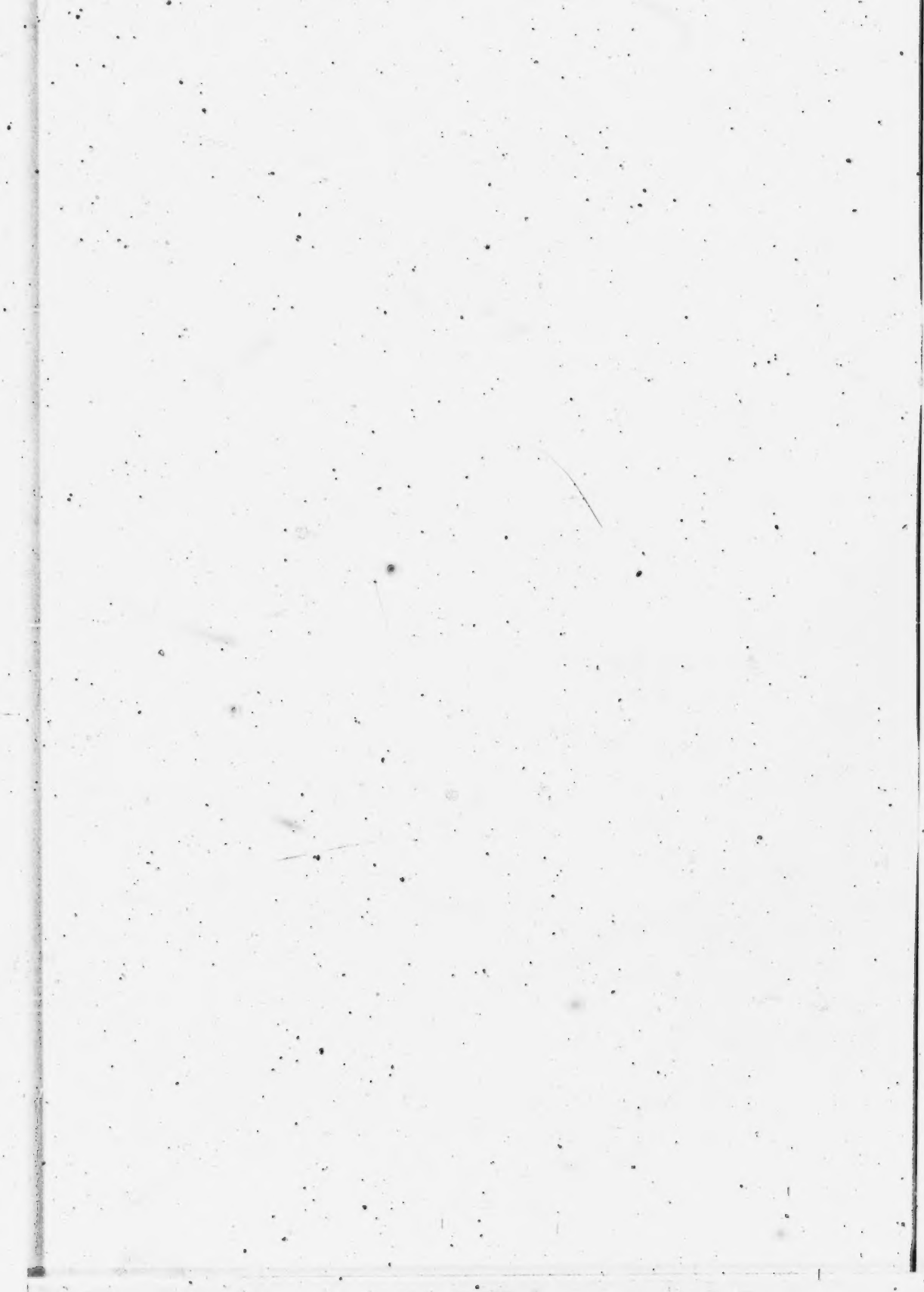
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On Writ of Certiorari to the Supreme Court of the State of Illinois.

BRIEF OF RESPONDENTS

**Illinois State Bar Association and Its Individual Members
of the Committee on Unauthorized Practice of Law.**

**CONSTITUTIONAL, STATUTORY PROVISIONS AND
CANONS OF ETHICS INVOLVED.**

Pertinent constitutional provisions consisting of the First and Fourteenth Amendments to the Constitution of the United States; Canons of Ethics of the Illinois

State Bar Association; Illinois Workmen's Compensation Act, Illinois Revised Statutes (1959), Ch. 48, § 138.19 (1) (2), 138.19 (c), § 138.16, and 29 U. S. C. A., § 141, Labor Management Relations Act, are involved (Appendix A).

QUESTIONS PRESENTED.

The Respondents adopt Nos. 2, 3 and 4 of this section as stated by Petitioners, but object to portion of No. 1 insofar as it asserts that the attorney's salary was paid by the Union from membership dues. The record refutes that statement (R. 15). In sworn answers to interrogatories, the Union responded: "No portion of dues is allocated to pay attorneys' salary".

STATEMENT OF THE CASE.

The legal proceeding in this case began with the filing of a complaint in the Circuit Court of Sangamon County, Illinois, wherein, the Illinois State Bar Association, and members of its Unauthorized Practice of Law Committee, as plaintiffs, brought suit against the United Mine Workers of America, District 12, as defendants (R. 1-4). The pleadings alleged that the Illinois State Bar Association (hereinafter referred to as "Bar Association") is a not-for-profit corporation organized for the purpose of establishing and maintaining the honor and dignity of the courts and of the profession of law, the protection of the public, the fostering and promoting of a high standard of professional ethics, and the due administration of justice in all courts in the State. The United Mine Workers of America, District 12, is a labor union, and appeared in court in response to the complaint in the name of Joseph Shannon, a member of District 12, and all members of said association made parties by representation. The complaint charges the Union has been engaged in the practice of law in Illinois by employing an attorney on a salary basis for the purpose of representing its members with respect to their individual claims for compensation under the provisions of the Workmen's Compensation Act of the State of Illinois. The complaint further charged that the Union is not and cannot be licensed to practice law in the State of Illinois, and despite its lack of authority has offered, furnished and rendered legal services and advice. These activities are charged to be, among other things, contrary to public policy, and "not only tend to degrade the legal profession and to bring the same into bad repute in the administration of justice, but also tend to mislead and defraud the public." The Bar Association in conclusion sought an injunction restraining and enjoining the defendant, its agents or employees from:

1. Giving legal counsel and advice.
2. Rendering legal opinions.
3. Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of the State of Illinois.
4. Practicing law in any form either directly or indirectly.
5. Advertising, advising or holding itself out to members or others as practicing law or as having a right to practice law.
6. Charging or collecting fees, commissions or payments or apportioning dues of members in any form for legal services.

Defendant, acting through Joseph Shannon, a member of District 12, United Mine Workers of America and all the members of the association made parties by representation, then moved the Court for an order directing the Bar Association to make the complaint more definite and certain as to the allegation that defendant, on occasion, filed claims with the Industrial Commission for and on behalf of a member without obtaining the member's permission, authorization or approval (R. 5). In response to an order entered on this motion the Bar Association pleaded that one Elery D. Morse, East Walnut Limits, Canton, Illinois, a UMW member was injured on July 18, 1961, in the course of his employment. In March, 1962, Morse retained the services of Claudon and Elson, attorneys, 21 W. Elm Street, Canton, Illinois, to file his application for adjustment of claim in regard to his claim against the Midland Electric Coal Corporation with the Industrial Commission of Illinois. On June 28, 1962, Claudon and Elson filed an application for adjustment of claim for Mr. Morse, Case No. 712,133, before the Industrial

Commission. One month later, on July 23, 1962, M. J. Hanagan, salaried attorney for United Mine Workers District 12, filed a similar application for Elery Morse, Case No. 713,647, without Morse's consent, approval, authorization, and without knowledge of the previous application having been filed (R. 6).

An answer by the Union was filed admitting the general allegations relating to the Bar Association and its individual members, and the existence of the Union. The Union denied it was engaged in the practice of law, but admitted the employment of an attorney on a salary basis for the sole purpose of representing the members in their individual claims before the Industrial Commission of the State of Illinois. The pleading denied filing without a member's permission, and as to the pleaded facts relating to Elery Morse, denied same, and stated further, that, even if true, such matter was immaterial to this case. It was further admitted that as an association it is not and cannot be licensed to practice law in Illinois. All other matters pleaded were likewise denied (R. 7-8).

The Union moved to strike the portions of the pleadings referring to the Elery Morse incident and for judgment on the pleadings (R. 8-10). This motion was denied by the trial court. The Union, one week later, filed a motion for reconsideration of the order denying motion for judgment on the pleadings stressing a violation of Section 19, of Article 2 of the Constitution of the State of Illinois and of the rights allegedly guaranteed the Miners by the First and Fourteenth Amendments of the Constitution of the United States. After hearing, this likewise was denied (R. 11).

Interrogatories were filed by the Bar Association and served upon the defendant's attorney (R. 55-62). Objections were made to the interrogatories and some were eliminated by order of court.

In the answers to plaintiffs' interrogatories, the officers of the Union were identified. It was disclosed that the Union had 8500 working members. It had offices in Springfield, Taylorville, DuQuoin and West Frankfort, Illinois. On legal aid, information was supplied naming an international special representative from Lewistown, a district special representative from Thompsonville, two secretaries (one in Springfield and one in West Frankfort) and the added information that local unions designate an officer or member to "assist other members in preparing and filing reports of accidents occurring in mines over which they have jurisdiction". The salaried attorney was identified as Stuart J. Traynor of Taylorville, Illinois, and it was stated that members by themselves or with assistance of someone in the local union prepare, sign and file for the attorney, either in Springfield or West Frankfort, a report of accident.

Attached to the answers and made a part thereof were three exhibits. Exhibit "A" was a Report to Attorney on Accident, Exhibit "B" was a letter from the union attorney to local Union officers and members, and Exhibit "C" was a letter from the president to the same people written four years later (Appendix B).

The Union admitted that the present attorney does not see and interview each injured member before starting a claim.

Stuart Traynor, up to date of answers to interrogatories, (January, 1964 to February 2, 1965) had filed 590 applications for adjustment of claims; had concluded 637 files, and had collected \$737,998.27 for the injured miners or their families. William D. Hanagan, serving only an interim term, filed only 20 applications for adjustment of claim, settled 87, and collected \$100,723.24. His father, M. J. Hanagan, who held the position of salaried attorney for many years, from January 1, 1961 until his death in

June of 1963, filed 1318 applications, concluded 1328 claims and collected \$1,859,640.65.

The interrogatories, further disclosed, that M. J. Hanagan received a salary of \$12,400 plus \$2,236.54 expenses for a total of \$14,436.54 in 1961; a total of \$14,954.79 in 1962 and until his death in 1963, the sum of \$7,044.16. William D. Hanagan received a salary of \$3,099.96 and expenses of \$323.05, for a total of \$3,423.01. Stuart J. Traynor from January through November, 1964, earned a salary of \$11,366.68 and received expenses of \$1497.60 for a total of \$12,864.28.

At a meeting of the Executive Board of the Union on August 5, 1963, a motion was made and passed unanimously authorizing the acting president, Joseph Shannon, to make arrangements with Stuart Traynor of Taylorville, Illinois for the purpose of retaining him "to handle District 12 compensation cases."

Dues of each member have been \$5.25 per month since November 1, 1964, but no portion of the dues is allocated to pay attorneys salary.

In addition to interrogatories submitted to defendant, the deposition of Stuart J. Traynor was taken (R. 31-54). In answer to questions, he advised that he was employed by the United Mine Workers of America, District 12, since October 1963, with direction and authorization to represent members of District 12 in claims for Workmen's Compensation Benefits under the Illinois Workmen's Compensation Act. He disclosed his salary of \$12,400 a year, that he is responsible and obligated to represent miners, no matter how many may have claims during any particular year, and his salary neither increases or decreases based on number of claims handled. The union never requires him, as part of his employment to do work outside the State of Illinois. He does not consider

himself hired to render legal advice on the running of District 12 or any of its internal affairs. His main function is to represent individual members when that person is hurt in a mining accident wherein he would qualify under the Workmen's Compensation Act of the State of Illinois. He maintains an office at Taylorville, for his services with the United Mine Workers, and the Union maintains office space at Springfield and West Frankfort. It is generally known among the members of the Union that they have a lawyer available to them for the purpose of presenting their claim before the Industrial Commission and this is true whether or not they know him personally. Because of his residence in Taylorville, a considerable distance from West Frankfort, he would not be one of the lawyers in the West Frankfort area with whom the members would be personally familiar. Most applications for adjustment of claim are signed outside of his presence. The miner can obtain the Report to Attorney form at the mine and need not go to either of the two offices, but sends it in. A secretary then fills out the application without the man being present and the attorney signs it. Traynor acknowledged that he could not find any language in the Report to Attorney that in any way instructs him to file a claim or hires him to do so as an individual. The application is sent in to the Industrial Commission, after a secretary signs the attorney's name on the form and at the time of this filing, in most instances, he has not seen the injured employee. The member secures all the medical reports for the attorney, either from the company doctor or from someone else, if the member is in need of further medical attention. In preparing for a hearing before an Arbitrator he does not send out advance notice for a conference with the injured miner before the hearing. Some drop in and see him ahead of time, but if they did not, the first time the attorney would see him would be the day of the hearing at place of the hearing. He confers

with the coal company lawyer and if they agreed as to the figure of settlement, a settlement contract is prepared and presented, otherwise they have a hearing before the Arbitrator for his decision. Although he has represented miners for private matters in his three county areas, he has never represented miners from the West Frankfort area for their private purposes. This individual representation has been more in the probate field than anything else.

He received his first contact from the Union in August, 1963 when he was told Mr. Shannon would like to talk to him. He was told it was necessary for the Union to hire an attorney to carry on the work of Mr. Hanagan. The next event was his receipt of a letter dated September 26, 1963, from Mr. Shannon advising him that he had been hired.

There was an error in the original answers to interrogatories which are corrected as follows:

14 (d) \$737,998.27.

This change is due to fact that from October to December of 1963, he filed 174 applications for adjustment of claim in his name and closed 150 cases for a total recovery of \$209,113.14.

Subsequently, the plaintiffs moved to strike paragraph 7 from their pleadings and the same was allowed.

After the pleadings were settled, the interrogatories answered and the deposition of Stuart Traynor accomplished, the United Mine Workers filed a motion for summary decree and, upon receipt thereof, the Illinois State Bar Association countered with their own motion for summary judgment. These motions were heard by the Honorable Creel Douglas, Chief Judge of the 7th Judicial Circuit, State of Illinois, and on September 7, 1965, he entered an

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order denying the relief sought by the United Mine Workers of America, District 12, and granted the motion of the Illinois State Bar Association, and thereby enjoined the United Mine Workers from doing any of the following acts

1. Giving legal counsel and advice.
2. Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois.
3. Rendering legal opinions.
4. Employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois.
5. Practicing law in any form either directly or indirectly.

The Union took an appeal to the Illinois Supreme Court, whose decision affirmed the holding of the Circuit Court. It is from this Illinois Supreme Court opinion that the United Mine Workers, District 12, have sought a writ of certiorari in this court which was granted February 27, 1967.

SUMMARY OF ARGUMENT.

The Illinois Supreme Court has consistently held that not-for-profit organizations which hire lawyers to represent their members are engaging in the unauthorized practice of law. The question of representation of union members by preselected attorneys was not new to Illinois when the **Mineworkers** suit was instituted. In 1958, the Illinois Supreme Court in **In re Brotherhood of Railroad Trainmen**, 13 Ill. 2d 391, 150 N. E. 2d 163, condemned the financial payback by the attorney to the union out of fees collected; but recognized the right of the union to recommend to its members the advisability of obtaining legal advice before making a settlement, and giving the names of attorneys who, in its opinion, have the capacity to handle such claims successfully.

After this decision, the Committee on Unauthorized Practice of the State Bar, in meetings held with mineworkers' representatives, urged the union to desist from its salaried lawyer arrangement and to follow the guidelines of recommendation of legal counsel as spelled out in the **Illinois Brotherhood** case. They refused to change their programs and, after all reasonable efforts failed, the Illinois State Bar Association instituted the present litigation to enjoin such practice. Repeated efforts, throughout the proceedings, were made to urge the United Mine Workers Union to change to the recommendation system. They continued their refusal.

The type of representation, with the volume of claims involved, was not conducive to the best interests of the public. The record does not support their claim that the plan insured competent and loyal legal counsel for the individual miner.

The claim of prohibition of attorneys' fees in compensation cases in Illinois is not supported by the statutory

law of the State, but, on the contrary, specific provisions of the Workmen's Compensation Act not only permitted attorneys' fees, but provide that they shall be regulated by the Industrial Commission.

The general language of the part of the Labor Management Relations Act dealing with "other mutual aid or protection" does not carry with it the right to usurp the authority of the Illinois Court to regulate and control the practice of law. The Congressional declaration of purpose and policy, as contained in Section 141 of the Act, does not include the individual rights of the members of the union, unrelated to the common purpose.

Professional Ethics opinions of the American Bar Association support the position taken by Illinois in this factual situation.

The injunctive decree was proper in all of its terms and was necessary for the protection of the public, who in this case is the individual miner.

Finally, the decision of the Illinois Supreme Court does not deny the petitioner union any constitutionally protected right, nor does the State decision conflict with any decision of this Court. The protection of the public and the assurance of the proper attorney-client relationship is the sole and only purpose for the existence of a State unauthorized practice of law committee, and its action here was necessary to enforce State protected rights of the public.

There was a compelling State interest that required the action of the committee and, finally, the ruling of the Illinois Supreme Court. This was not some vague unidentifiable right that was being protected, but a substantial right of the State to control the practice of law within its border. There was no invasion of the indi-

vidual miner's right of freedom of expression and association. It was because of its profound duty to the public that Illinois concerned itself with (1) the preservation of the integrity of the attorney-client relationship, (2) determination that Federal constitutional provisions of free expression and association are not infringed by the court's control of professional conduct and the protection of the public, and (3) the prevention of substantial commercialization of the law profession. The Illinois Supreme Court is not attempting to regulate conduct involving the application of a Federal law, such as the Safety Appliance Act, the Federal Employer's Liability Act, or the practice before the United States Patent Office, but the Illinois decision merely limited its curtailment of the union's conduct to State protected rights only.

The decision of the lower court should be affirmed.

ARGUMENT.

I.

The Decision Below Is Clearly Correct.

It is basic to This Court's consideration of the Brief of Petitioner's, United Mine Workers of America, District 12, that it be advised of the long history of Illinois Supreme Court pronouncements as to what constitutes the unauthorized practice of law within the State of Illinois. This court has consistently held that organizations, including not-for-profit organizations, which hire lawyers to represent their members are engaging in the unauthorized practice of law. **People ex rel. Courtney v. Association of Real Estate Taxpayers of Illinois**, 354 Ill. 102, 187 N. E. 823; **People ex rel. Chicago Bar Association v. The Motorists Association of Illinois**, 354 Ill. 595, 188 N. E. 827; **People ex rel. Chicago Bar Association v. Chicago Motor Club**, 362 Ill. 50, 199 N. E. 1.

The **Chicago Motor Club** case sets forth the position of Illinois as to the activities of a service organization when it said on pages 56-57:

"By way of exception to the findings of the commissioner, respondent claims there is no admission in the record that it solicited memberships for the purpose of performing legal services; that the corporation itself performed no legal services; but such as were in fact performed were by lawyers engaged by respondent for its members pursuant to authority received by it from them; that such legal services were paid for out of dues collected by respondent from its members as their representative and agent. It is further contended that respondent is not engaged in the practice of law within its ordinarily accepted sense, but that its legal functions are only a part

of its many-sided activities as a service organization whose members have a common interest. However beneficial its many other purposes and services seem to be to its members and to the public generally, we cannot condone the advertisements and solicitations of memberships by respondent and its admission that it was only acting as agent in rendering legal services for its members without abandoning the rules laid down in several recent cases governing such practices. While the case of **People v. Peoples Stock Yards Bank**, 344 Ill. 462, is distinguishable from the present case in many respects, yet the fundamental principle was there expressed 'a corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it' (emphasis ours). When the Chicago Motor Club offered legal services to its members with the statement, 'should you be arrested for an alleged violation of the Motor Vehicle law, you may call the legal department, and one of our attorneys will conduct your defense in court,' it was engaging in the business of hiring lawyers to practice law for its members. This we have repeatedly condemned in Illinois. (**People v. Peoples Stock Yards Bank**, supra; **People v. Motorists Ass'n**, 354 Ill. 595; **People v. Real Estate Taxpayers**, 354 id. 102.) Other jurisdictions have reached the same or similar conclusions in recent cases. (**Goodman v. Motorists Alliance**, 29 Ohio N. P. R. 31; **In re Morse**, 98 Vt. 85, 126 Atl. 550; **In re Opinion of the Justices**, 194 N. E. (Mass.) 313; **Rhode Island Bar Ass'n**, 179 Atl. (R. I.) 139 (decided May 9, 1935.) The fact that respondent was a corporation organized not for profit does not vary the rule. **People v. Real Estate Taxpayers**, supra."

Legal services cannot be capitalized for the profit of laymen, corporate or otherwise, directly or indirectly, in this State. In practically every jurisdiction

where the issue has been raised it has been held that the public welfare demands that legal services should not be commercialized and that no corporation, association or partnership of laymen can contract with its members to supply them with legal services, as if that service were a commodity which could be advertised, bought, sold and delivered (emphasis ours).

The **Illinois Mineworkers** Opinion (R. 94-105) and the Appellee's brief filed in the Illinois Supreme Court (R. 63-94) fully develop the court-announced concept of unauthorized practice of law in Illinois by unincorporated associations. This problem is not new nor is it prospective with the Illinois Court or the organized bar of the State of Illinois. The Committee on Unauthorized Practice of the State Bar for many years has considered these problems, including the salaried lawyer arrangement of United Mine Workers, District 12, and has taken court action in stopping such practices (R. 77-83).

This question of representation of union members by elected attorneys was not new to the Illinois Supreme Court when the **mineworkers** suit was initiated. In 1958, the Illinois Supreme Court handed down its opinion in **In re Brotherhood of Railroad Trainmen**, 13 Ill. 2d 391, 150 N. E. 2d 163. While condemning the financial pay-back by the attorney to the union out of fees collected, that court readily recognized the right of the union to recommend to its members generally, and, to injured members or their survivors in particular, first: the advisability of obtaining legal advice before making a settlement; and second: the names of attorneys who, in its opinion, have the capacity to handle such claims successfully (13 Ill. 2d 391, 398).

Immediately following this pronouncement by our court, the Illinois State Bar Association Unauthorized Practice

of Law Committee, in meetings held with the mineworkers' representatives, urged that union to desist from its salaried lawyer arrangement and follow the guidelines of recommendation of legal counsel approved by the Illinois Court in its **Brotherhood** case. In 1964, after all reasonable efforts failed, the Bar Association, acting through its committee, initiated the present litigation. Throughout the course of the litigation, at every appearance before the judges of the Circuit Court of Sangamon County, and, even before the Supreme Court, in our brief (R. 72-3, 92) as well as in oral argument, this Bar Association, through its counsel, offered to dismiss the suit if the salaried lawyer arrangements were abandoned and a proper recommendation plan substituted. This the union was unwilling to do.

The State Bar is interested in seeing that union members obtain "competent and loyal legal counsel" (R. 72-3), but we are not convinced that the plan now in effect accomplishes such purpose. On the contrary, the record herein belies such claim. It is axiomatic that not all claims or suits brought before administrative tribunals or courts are correctly decided at the lowest level. For this reason, appellate procedures are an inherent part of our judicial system. The rulings of the Industrial Commission are subject to review in the Circuit Courts of this State, and, from there, to our Supreme Court (Ill. Rev. Stat. 1959, Ch. 48, Sec. 138.19 (1) (2)). The fundamental duty of an attorney involves undiluted loyalty to the client whom he serves and whose interest he protects (**Illinois State Bar Association v. United Mine Workers**, District 12, 35 Ill. 2d 20, 112, 219 N. E. 2d 503 (1966)). It follows, without question, that this duty extends to the maximum representation of his individual client's interest. An analysis of the Workmen's Compensation cases which reached the Supreme Court of the State of Illinois for a thirty-one year period (1936-1967) contained in volumes published

by the official Reporter, discloses that 351 compensation cases were decided. Of this total, 252 thereof were appeals initiated by employers, 99 were pursued by employees. In that number only 11 cases were appealed by the coal mining companies and 10 by the miner. Of this group of 21 cases, only 5 originated involving United Mine Workers, District 12.¹ Four of those appeals were filed by the coal mining companies and only one by a miner affiliated with the Petitioners herein. It is further significant that the last appeal by the mineworker was in 1942. During the above referred to thirty-one year period, the rates of recovery for specific injury were increased several times by statute, the last time being in 1963, before this litigation commenced. Yet, the salaried lawyer, in the calendar year 1964, recovered less on the average than his predecessor, even though he was practicing before the Commission when the rates were at a higher level (R. 53-4, 58-60). In the years 1964-66, during the pendency of this litigation, we find there was a substantial increase of appeals to the Supreme Court originating from this Administrative Agency due to the adoption of Illinois' new Judicial Article on January 1, 1964, which made appellate procedures more simplified and expeditious. Ninety-nine (99) compensation cases were taken by appeal to that court, of which seventy-nine (79) were advanced by the employer and twenty (20) by the employee. Not a single case involving a United Mine Workers, District 12 member, either as petitioner or respondent, reached our highest court in that period. Is this evidence of "competent and loyal legal counsel" so vital to the individual interest of the miner? We cannot believe that this salaried law-

¹ Beckemeyer Coal Co. v. Ind. Comm., 370 Ill. 113 (1938); John Florczak v. Ind. Comm., 381 Ill. 117 (1942); Franklin County Coal Co. v. Ind. Comm., 398 Ill. 528 (1948); Chicago, Wilmington & Franklin Coal Co. v. Ind. Comm. (Sarafin), 399 Ill. 76 (1948); Chicago, Wilmington & Franklin Coal Co. v. Ind. Comm. (Matchek), 400 Ill. 60 (1948).

yer arrangement has fully advanced legitimate legal claims of the mineworker. On the contrary, when considered with the volume of cases handled by this salaried attorney per year (R. 54) we cannot help but feel that, in the interest of expediting his work load, he most likely has dealt with the coal mining company's lawyers on a volume basis (sometimes called "wholesaling files"), and it would seem a logical conclusion that the individual mineworker's injury claim has been compromised at a figure far below what might have been secured if the mining company lawyer was dealing with independent attorneys. He becomes no better than the personal injury lawyer-broker who deals in volume with the insurance company and trades cases as a package deal, rather than by considering the injury aspect of each individual file.²

In Illinois, many attorneys are highly competent and successful practitioners before the Industrial Commission of the State of Illinois. There is absolutely no shortage of lawyers who are willing, ready and able to handle Workmen's Compensation cases of the union members. (The section on Workmen's Compensation of the Illinois State Bar Association has enrolled 969 officers and members.)³ It is highly significant that nowhere in this record is there

² Carlin, *Ethics and The Legal Profession* (1965); Carlin and Howard, *Legal Representation and Class Justice*, 12 U. C. L. A. L. Rev. 381, 386.

³ Records of the Illinois State Bar Association reveal that of these 969 members who by their membership in the Section show their interest in compensation matters, 400 practice in Chicago, 85 in Cook County, exclusive of Chicago. The three counties surrounding Cook—62; the next eight counties away from Cook—68; next six counties—47; the next fifteen—83; the next sixteen counties—77; the next 14—45; the next 30, comprising Southern Illinois below Route 40—46; and the popular seven counties adjacent to St. Louis, Missouri—56. It is not intended that this list number only those attorneys who can competently handle a workmen's compensation claim, but it is indicative of the large percentage of the lawyers practicing in Illinois who are available.

a word of testimony, nor a single affidavit filed by the petitioners that any member of the union, for any reason whatsoever, was unable to find competent, individual attorneys to handle their claims. If such fact were true, most certainly the petitioners would have filled the trial court record with proof thereof, by depositions, or affidavits to this effect, before asking for a summary decree. Only if such circumstances existed in Illinois, could our factual situation be considered to parallel the **Button** (371 U. S. 415) case. Without it, their hue and cry of precedence vanishes.

A. An attorney may charge a fee for services rendered in handling Workmen's Compensation Act cases.

The Petitioner, in its brief, would have this court believe that a principal objective of the Workmen's Compensation Act was to assure that no one take anything out of an award except the injured person or his dependents, if he was deceased (Pet. brief 36-7). Reliance for this statement is upon a section of the Statute which prohibits an award to be assignable or subject to any lien, attachment, or garnishment. The meaning attached to this section is extended by Petitioner to exclude an attorney charging a fee for services rendered in a compensation case. The cases relied on, however, all refer to depleting the payments of an award because of a lien or charge from another source. In quoting from **Lasley v. Tazewell Coal Co.**, 223 Ill. App. 462, a 1921 decision, it is significant to note that the Appellate Court found against an attorney asserting a lien against the coal company for his fee after obtaining an award from the Industrial Commission. This is apparent by the following language from the opinion:

"There is nothing in the other sections of the Act which in any way conflicts with the provision referred to," that the Appellate Court did not review the entire Act. The Workmen's Compensation Act has and does provide for

the awarding of attorneys fees (Ill. Rev. Stat. 1965, Ch. 48, Sec. 138.16).

The section as to liens referred to by Petitioner was included in the original Act of 1912, and, it is conceded that the section on Rules did not contain any reference to attorneys fees until June 28, 1915, when the following was added:

“The Board shall have the power to determine the reasonableness and fix the amount or any fee or compensation charged by any person, for any service performed in connection with this Act, or for which payment is to be made under this Act, or rendered in securing any right under this Act. Hurd, Ill. Rev. Stat., Ch. 48, Sec. 141 (1915). The words ‘including attorneys, physicians, surgeons and hospitals’ were added in 1925 immediately following the phrase ‘or compensation charged by any person.’ ”

As both sections were part of the Workmen's Compensation Act in 1921, and, still appear in that Act, the Appellate Court, in *Lasley* were either uninformed or, by nature of these provisions, merely limited its decision to a prohibition of enforcing an attorneys lien against the employer. All attorneys fees are fixed by the Industrial Commission and are carefully and judiciously controlled.⁴ It is common knowledge that the maximum fee allowed is 20%. However, rarely does the Commission approve fees of that size and most fees awarded are substantially

⁴ *People ex rel. Chicago Bar Assn. v. Lally*, 313 Ill. 21, 144 N. E. 329 (1924):

“The administration of the Workmen's Compensation Act is put in the hands of the Industrial Commission. It fixes the amount of compensation to be paid and the amount of attorneys' fees or compensation rendered for any service under the Act. Beneficiaries of the Act are under the protection of the Commission, and they can waive none of the provisions of the Act in regard to compensation.”

less. It should also be mentioned that the maximum fee approved in a death case is 10%.

The law recognized that attorneys fees would and could be charged and are subject to the review of the Commission, when it in Section 19 (c) of the Act, in part, stated:

"The fees and payment thereof of all attorneys and physicians for services authorized by the Commission under this Act, shall, upon request of either the employer or the employee or the beneficiary affected, be subject to the review and decision of the Commission." Ch. 48, Sec. 138.19 (c).

The Petitioners claim that the **mineworkers** opinion in this instant case conflicts with public policy as expressed by the Legislature is an exercise in fallacious reasoning. It is self evident that the section on liens, attachments and garnishments cannot be read to contain a prohibition of attorneys fees for professional services.

B. The Labor-Management Relations Act does not authorize or have within its purview the union salaried lawyer arrangement considered by the Illinois Supreme Court.

The mineworkers, throughout the entire course of this litigation, have endeavored to place unwarranted significance upon very general language contained in Section 157 of the Labor Management Relations Act (29 U.S. C. A., 141-157). The section relied upon, after stating the right of employees to organize and to collectively bargain contains what petitioner believes to be an all inclusive catch-all phrase:

"and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection..."

To this language the union claims authority for it "to make wise provision in advance for competent and loyal

legal assistance" in the event of disabling injury or death arising out of and in the course of member's employment. This assumes that because coal mining is hazardous, its members need free legal service and that its appointment of one man to handle all its members claims insures competent and loyal legal assistance.⁵ The facts and the records of the Department of Mines & Minerals of the State of Illinois refute each claim.⁶

It is common practice among attorneys handling claims before the Industrial Commission not to accept as final

⁵ "We find nothing to suggest that Congress intended by the Railway Labor Act, any more than by the Labor Management Relations Act (29 U. S. C. A. 141), to overthrow State regulation of the legal profession and the unauthorized practice of law." *In re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 395.

29 U. S. C. A., § 141, specifically sets forth the purposes and policy of the Labor-Management Relations Act. None of the provisions thereof encompass the right to furnish a salaried lawyer to handle individual claims of the members.

⁶ The Director of Mines and Minerals of the Department of Mines and Minerals of the State of Illinois stated in the Illinois Blue Book, 1963-1964, that the mineral industry in Illinois, of which the chief mineral mined is coal, exceeds a gross dollar revenue of \$600,000,000 per year. Illinois continued as fourth-ranking coal producing state in the nation, producing more than 11 per cent of all coal. Its value in 1962 was \$186.6 million. In 1965, coal produced had a value of \$218,977,345.00 (Illinois Blue Book, 1965-1966). The State of Illinois is endowed with the largest known coal reserves in the nation. It is estimated that 137 billion tons of coal remain in the ground in seams of minable thickness, which at the present rate would take over 1000 years to exhaust (Illinois Blue Book, 1965-1966). The 1966 Annual Coal, Oil and Gas Report of the Department of Mines and Minerals, page 16, Table 2, "General Statement with Comparative Figures, 1962-66", although showing a decline in the number of mines operating (from 116 to 84), shows a 15 million ton increase in coal output, an increase in the number of miners working from 8774 to 8994, and an increase in average days worked from 182 to 200 days. Still another statistical chart, "Labor and Employment—Table 17", reflects upon petitioner's claims. In this chart, it compares fatal and non-fatal accidents for 38 years. Since 1962, the report shows an average per year of 430 to 485 fatal and non-fatal accidents.

and unimpeachable the medical reports of the company doctor. Each injured employee is submitted for physical examination and possible treatment to a specialist who is called upon to give a report as to his condition, often bases on percentages to aid the Arbitrator on making an award within the purview of the Statute. By this method, the lawyer is assured that the employee will present to the Commission the opinions of others than company doctors, and advances the rights and, by its very nature, increase the amount that is to be awarded. This is not the customary practice of the salaried union counsel. This is a rarity rather than the ordinary course of procedure (R. 42).

Because of the volume of claims that this one attorney must handle (430-485 per year), it is obvious that a thorough and conscientious handling would consume all of his time, and in all probability if studied and presented on an individual basis, instead of a mass production technique, would probably reduce substantially the number of claims concluded each year. This volume needs the undivided attention of the single attorney, yet, we find Stuart Traynor was a State Senator and had a private practice other than the mineworkers' representation. (R. 31, 41). It is well known that a Senator must spend a minimum of three days, usually Tuesday, Wednesday and Thursday, in the State Capitol representing his constituents during a legislative session. These sessions last from 7 to 8 months beginning in January. Illinois Blue Book 1963-64, 1964-5, 1965-6. This leaves but 5 months, including part of the summer, to handle the volume previously mentioned. His salary per annum as a legislator is Nine Thousand (\$9,000.00) Dollars, almost equal to his pay from the Union.⁷ The Industrial Commission sends arbitrators to various locations throughout the State on a

⁷ Ill. Rev. Stat. 1963, Ch. 63, § 14.

regular basis to hear the cases.⁸ Many of these locations are in the center of coal mining areas and are removed from Springfield, the State Capitol, by several hundred miles (R. 43-45). Thus, the mineworkers' attorney cannot do justice to his mineworker representation if he is to adequately represent his constituents. By the same token, he cannot do justice to his Senatorial position, if he spends more of his time representing the mineworkers. Look at the practicalities of the dilemma of Mr. Traynor. Because the Legislature meets every other year, he must subvert the interest of the mineworker for at least 7 months of that period in order to perform his public functions. This is not evidence of "competent and loyal legal assistance".

The Supreme Court of Illinois, having pride in its continuing efforts to protect the public and to regulate the legal profession, was forced by the factual situation presented to it in the **mineworkers** case to reach its announced conclusion. To have done otherwise would have avoided the duty it has as the highest judicial body in the State and its obligation to protect the public. We have repeatedly stated that the individual miner is the public in the eyes of the Illinois Supreme Court, and he does not lose that identity merely because he is a member of a union.

C. Petitioners' arguments run contra to facts as well as opinions of committees on professional ethics. Its analogies are wanting in support.

The Union's explanation that a legal department had to be started because the "interests of the members were being juggled and, even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorneys" (R. 14). This cry arose within one year after the creation of the Industrial Com-

⁸ Ill. Rev. Stat. 1963, Ch. 48, § 138.19.

mission and before it had a chance to operate. Strangely enough, they refer to "damage suits"—not injury or compensation cases. Did the Union have in mind the establishment of a legal department to handle personal injury matters unrelated to compensation? Was this proclamation in 1913 an advertising gimmick to lure members away from the rival Progressive Miners Union—a devise to build up its membership? If the Union was so concerned with the alleged gauging of its members by attorneys why did it not seek relief through the legislature or the Industrial Commission? We find that on June 29, 1915, the Legislature amended the Statute as follows:

"The board shall have the power to determine the reasonableness and fix the amount of any fee or compensation charged by any person for any services performed in connection with this Act, or for which payment is to be made under this Act, or rendered in securing any right under this Act." Hurd, Ill. Rev. Stat. 1915, Sec. 153.

We are unable to find any legislative notes as to the reason for this amendment or what group promoted it. However, its purpose is obvious and meets the objection of the mineworkers as expressed to their membership, if their concern was, truthfully, compensation claims. Yet, they chose not to eliminate their salaried lawyer arrangement and permitted it to continue under circumstances which disclosed that the individual miner was not receiving adequate legal representation.

Petitioner chose to claim that the Illinois decision runs contra to an informal opinion of the American Bar Association's Committee on Professional Ethics, and, quotes the concluding paragraph of No. 469 as authority for their assertion that the mineworkers plan has the approval of that committee. Petitioner does not inform this court of the full opinion (Appendix C) which emphatically reas-

serts previous opinions that "where a lawyer is selected and employed, as well as paid, by the employer or association to represent its employees or members, the employment may well be unethical." Petitioner, further, refers to a portion of a letter to the appointed counsel (R. 19-20) which tells him to turn over a file if the member is represented by other counsel. It is interesting to note that the format used to obtain information in no way gives the member the opportunity to disclose he has other counsel. The **Report to Attorney on Accident** form (R. 16-17) does not contain any words of employment of the Union Lawyer to consent for him to proceed. It is arbitrarily assumed that the salaried union lawyer will represent him. What is there in these forms which would lead the salaried lawyer to believe or not to believe that the individual miner wants or even has secured other counsel? The circumstance of the Elery Morse incident eminently demonstrates this void (R. 9). It would seem, therefore, that this right to choose counsel is an empty one.

We also find a purported analogy between the lawyer hired by the insurance company to defend an insured in an automobile accident case with the mineworkers salaried lawyer arrangement. It is emphasized that in approving the relationship, a committee on Professional Ethics of the ABA stated that "the company and the insured are virtually one in their common interest and that the same may be said of the Union and its injured employee-members." A reading of Formal Opinion 282 (Appendix D), shows that such equating is not correct. The context of the remark by the committee has reference to a community of interest growing out of the contract of insurance with respect to an action brought by a third party against the insured within the policy provisions of defense, investigation and other contractual elements of control agreed upon between the parties (not the least of which is that it is the insurance company's money

that is involved). The Committee found that the lawyer hired by the insurance company can neither be said to be "exploited" by it in violation of Canon 35, nor that the lawyer was "lending his services to the unauthorized practice of law" under Canon 47. It further held that no profit inured to the company through the lawyers' employment and such employment was a necessary incident to the main contract of insurance. No part of Formal Opinion 282 can be stated to support the mine-worker's plan which is under attack here. On the contrary, the record shows, among other things, that the mineworkers' salaried lawyer is and can be "exploited" to the detriment of the individual miner and, as such, is lending his services to the "unauthorized practice of law" by a lay intermediary. When considering the type of services rendered and the volume involved, no other conclusion can be reached but that the individual miner is exploited to benefit the union in its claim of better representation as between it and rival coalminers' unions. We have previously shown that the members of the union are not impoverished or without access to competent legal advice and counsel.

D. The injunctive decree was proper and complete for the purposes intended.

Petitioners object to the scope of the injunctive decree as being too broad and not supported by the record. Petitioner's brief incorrectly paraphrases Items 3 and 4 of said decree. The decree has for its purpose stopping the United Mine Workers Union from representing its members in their individual claims through an attorney, the hiring of such an attorney for that purpose, and the necessary incidence to that arrangement. It may seem somewhat enlarged to enjoin the Union from the (1) giving of legal counsel and advice, and (2) rendering of legal opinions, but such facets of the decree are part of

the prohibition of the Union "practicing law in any form either directly or indirectly." Perhaps each of the first two elements should have been included as a subparagraph of No. 5. However, from a review of the facts and the evil sought to be controlled, the decree, in its present form, is understandable and correct. Certainly, from the facts of this case, items 3 and 4 must be upheld. The Illinois Supreme Court recognized the problem presented to it, and accepted its responsibility in controlling the legal profession and protecting the public. If it had decided that the injunctive decree was too broad in scope, it would have stricken that part which did not fall within the purview of its decision. It did not choose to do so. Therefore, This Supreme Court should not render a decision on that ground only, and reverse the considered decision of the Illinois Court.

Petitioner cites the case of **State of Wyoming v. State of Colorado**, 286 U. S. 494, as authority for the proposition that an injunctive decree cannot be broader or more extensive than the case warrants. The cited case does not so hold, but the Supreme Court has held that when a party brings a judgment or decree to it for review, on that party rests the burden of showing in what respect the decree is erroneous. **Federal Trade Commission v. Beech Nut Co.**, 257 U. S. 441. The United Mine Workers has failed to sustain the burden placed upon them and have merely indulged in categorical statements of denial. This very court has acknowledged that "it is a salutary principle that when one has been found to have committed acts in violation of a law, he may be restrained from committing other related acts". **NLRB v. Express Publishing Company**, 312 U. S. 42. "Giving legal counsel and advice" and "rendering legal opinions" are sufficiently related to the main subject of unauthorized practice as being a proper element of the decree that was entered in this cause.

If the Court, after approving, in general, the position taken by the Illinois Supreme Court, is inclined to limit the decree, it has the power to strike from any decree restraints upon the commission of unlawful acts which are disassociated from those which a defendant has committed. **Swift & Company v. U. S.**, 196 U. S. 375; **New York, New Haven and Hartford Ry. Co. v. Interstate Commerce Commission**, 200 U. S. 361. By this authority, the decision could be limited to approving only such portion as the Court believes is warranted by the action taken. As a result, the decree could be limited to enjoining the United Mine Workers, District 12, from:

a) Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois, and

b) Employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois.

II.

The Illinois Supreme Court Decision Does Not Deny the Petitioner Any Constitutionally Protected Right Nor Does the State Decision Conflict With Any Decision of This Court.

When we filed the present suit against the mineworkers in June of 1964, your court had already handed down the decision in **Button** (371 U. S. 417, Jan. 14, 1963), and **Virginia Brotherhood** (377 U. S. 1, April 20, 1964). As lawyers, and above all, as members of the Unauthorized Practice of Law Committee, it behooved us to give careful consideration to the intent and meaning of these decisions because of their possible effect on matters pending

before us. A searching analysis of these cases, while comparing them with the factual situation involving the mine-workers in Illinois, and its purely **intrastate** character, convinced us, as attorneys, that our present litigation was in no way comparable to these decided matters. On the contrary, upon reviewing these two opinions with our own **Illinois Brotherhood** case, the Bar Association's course of action was considered proper and was warranted. As attorneys, it would be fool-hardy and presumptuous on our part to arbitrarily disregard the pronouncement of the highest court of the land for the sole and only purpose of harassing a union. It cannot be considered harassment, when you plead with them to adopt a course of conduct approved by the highest court in the land in **Virginia Brotherhood** (377 U. S. 1, at p. 8) (R. 92, 104).

The prime concern of the Bar Association and its Unauthorized Practice of Law Committee is the protection of the public. In this instance, the public is the individual mineworker, and he does not lose that status merely because he is a member of a large union. The protection of the public and the assurance of the proper attorney-client relationship is the sole and only purpose for the existence of a state Unauthorized Practice of Law Committee.

Our Illinois Supreme Court carefully considered the effect and the meaning of the pronouncements in **Button** (371 U. S. 415), and **Virginia Brotherhood** (377 U. S. 1), as it might be applicable to the mineworkers. The Court stated:

"In **Virginia Brotherhood Trainmen** the Court held that the First and Fourteenth Amendments protect the rights of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers. Since the part of the decree to which the Brotherhood objects infringes those rights, it cannot stand; and to the extent any

other part of the decree forbids these activities it too must fall." 377 U. S. at p. 8.

"The Court there (377 U. S. 5, n. 9) specifically pointed out that the railroad trainmen were objecting to only those portions of the decree encompassed by the language of the holding, as the Brotherhood had denied that it was engaging in practices forbidden by our decree in **In Re Brotherhood of Railroad Trainmen**, 13 Ill. 2d 391. Accordingly, that holding does not purport to overturn our decision precluding any financial connection between the Brotherhood and the counsel selected by it to handle individual membership claims. As a consequence, we do not read **Virginia Brotherhood Trainmen** as constitutionally protecting the conduct we are concerned with here, i. e., employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission. The Circuit Court decree in question here does not attempt to restrain the union from advising its members to seek legal advice or from recommending particular attorneys thought competent to handle Workmen's Compensation claims. As related earlier, our decision in **In re Brotherhood of Railroad Trainmen**, specifically allows such conduct."

"In **N. A. A. C. P. v. Button**, the Supreme Court of the United States held that a system devised by the N. A. A. C. P. to furnish and recommend attorneys (who were apparently compensated on a *per diem* basis by the organization in connection with each case handled) to member litigants for the prosecution of civil rights cases was constitutionally protected by the First and Fourteenth Amendments. However, the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot as such be equated with the bodily injury litigation with which we are concerned here. Also, it is

to be noted that an apparent dearth of Virginia lawyers willing to handle civil rights litigation was deemed of some importance by the Supreme Court, and at least Justice Douglas was influenced by his conclusion that the State's attempt to characterize the N. A. A. C. P. activities as 'solicitation' indicated a legislative purpose to penalize that group because of desegregation activities. Further, the majority opinion there read the decree of the Virginia Supreme Court of Appeals 'as prescribing any arrangement by which prospective litigants are advised to seek the assistance of particular attorneys' (371 U. S. at p. 433). Under such construction, the decree was deemed violative of the First and Fourteenth Amendment freedoms of speech and expression."

Comparing the **Button** facts with the mineworkers, the Illinois Court rightfully held that Illinois was not attempting to prohibit the union from advising its members to seek the assistance of particular attorneys, and pointed out that the Bar Association conceded that the mineworkers "may validly advise their members to seek legal advice in connection with their claims and may properly recommend particular attorneys deemed competent to handle such litigation" (R. 104).

The Illinois Court correctly concluded that the decision entered by the Circuit Court of Sangamon County was not violative of the First Amendment guarantees relating to freedom of association and expression. This State Court decision referred to the recognition in both **Button** (371 U. S. 438-40) and **Virginia Brotherhood** (377 U. S. 8, 10) cases, of the right of individual states to regulate the practice of law and those who unauthorizingly practice it (R. 104-5).

We find in **Button** that the facts disclosed no compelling state interest to justify Virginia's action. To the same

effect is this Court's opinion in the **Virginia Brotherhood Trainman** case (377 U. S. 8). Each decision, then, justified its application of First Amendment protection in reaching results announced. Illinois is not ignoring its recognition of the rights so vividly protected in **Button** and **Virginia Brotherhood Trainmen**; specifically the right of political expression or the right to advise and recommend particular attorneys because of their competence in a particular legal field. On the contrary, Illinois urges those rights and encourages their proper use for the benefit of the Union member in his individual affairs. What Illinois is concerned about, and in which it has a compelling state interest, is the protection of the public in connection with the practice of law by members of the profession admitted in its state acting through a lay intermediary. The maintenance of high professional standards among those who practice law, the prohibitions of acts of champerty, barratry and maintenance, the adherence to well-founded Canons of Ethics against solicitations and intervention by lay intermediaries, as well as statutory provisions forbidding the unauthorized practice of law are all factors involving clear and compelling state interests and have continually received the attention of Illinois Courts. Illinois, through the efforts of its Bar Association has repeatedly caused its Supreme Court to look into arrangements which challenge this protection of the public, and, as an incident thereto, the profession. We have referred earlier to the history of this court in that regard. The Illinois Supreme Court is not blind to progress or sociological development, as evidenced by its ruling in the **Illinois Brotherhood** case. You do not find it striking down the basic plan fostered by the Brotherhood. It only restricted its evil. That evil was the financial connection between the Brotherhood and the attorneys, and the concern of interference with the individual attorney-client relationship. It has done no more in its mineworker decision. It attacks the salaried

lawyer relationship for the evil it exposes, and it attempts to assure to the individual member of the union the undivided loyalty of his attorney. Neither the Court nor the Bar Association has put arbitrary road blocks in the path of the union. They merely direct that its **Illinois Brotherhood** and the **Virginia Brotherhood Trainmen** decisions be followed by eliminating that financial connection between union and attorney, and substituting the practice of selecting a list of qualified and competent attorneys to recommend to the members for that member to hire, and for that member to pay for services rendered.

In considering whether Illinois has a "compelling state interest" in controlling the practice of law and the protection of the public, the Court rightfully looked into the potential problems of the future under this plan or any similar device to circumvent the desired individual attorney-client relationship. Because the Illinois Supreme Court is concerned with what might happen in the future, the union charges it with unnecessary clairvoyance, and condemns such reasoning. Petitioner ignores, however, the responsibility of the Illinois Court over the legal profession and its duty to protect the public, incidental thereto. It is no answer to say that this plan or any one like it should be continued because the Court has the right to correct individual abuses as they are brought to its attention. Consider if you will, what this means, and its effect upon the individual. The salaried lawyer handles a claim for an individual mineworker member, and, because he has not fully prepared his case, the mineworker receives an award considerably less than the maximum he was entitled to or could have received. Consider further that this situation, because of the salaried lawyer relationship, does not come to the attention of the Bar until the appeal time has been exhausted. Certainly, the Bar and the Court are interested in this case and probably will hold hearings as to the lawyer's conduct, to deter-

mine whether this was incompetence, or of such a character to deserve suspension or disbarment. What good is this control element to the individual whose claim has not been handled properly? Obviously, he is left without a remedy unless it is against the lawyer for mal-practice. The Supreme Court of every state, not only Illinois, must consider many matters prospectively in order to fulfill its rule making function. It is because of its profound duty that Illinois concerned itself with (1) the preservation of the integrity of the attorney-client relationship, (2) determined that Federal Constitutional provisions of free expression and association are not infringed by that court's control of professional conduct and its protection of the public, and (3) the prevention of substantial commercialization of the law profession.

We do not find any constitutional infringement of the rights of the Illinois mineworkers in the action taken by the Courts of Illinois to regulate and control the practice of law within its border. The State of Illinois has a "compelling state interest" in controlling the standards of professional conduct, **NAACP v. Button**, 371 U. S. 415 at 438. The Illinois Supreme Court is not attempting to regulate conduct involving the application of a Federal law, such as the Safety Appliance Act, the Federal Employer's Liability Act, or the practice before the United States Patent Office, **Sperry v. State of Florida**, 373 U. S. 379, but the Illinois decision merely limited its curtailment of the Union's conduct to state protected rights only.

III.

A Discussion of Group Legal Services Is Not Pertinent to the Issues in This Case.

The problem presented by the facts of this case were of such a nature that any discussion of group legal services as an answer to the issues raised herein would

be improper. The extent of the legal services rendered by the salaried lawyer employed by United Mine Workers of America, District 12, made it imperative that the Illinois Supreme Court reach the decision it rendered. It was a purely local problem within Illinois, involving a union and a lawyer, and the proper application of the prohibitions contained in the Canons of Ethics. It was a proper exercise of the Court's power to control the practice of law.

We have treated this improper insertion of consideration of group legal services in our Objections to requests by others to file as Amicus Curiae. The position we asserted therein is the position of the Illinois State Bar Association and, by virtue of its many decisions on the subject of unauthorized practice, is the position of the Illinois Supreme Court.

CONCLUSION.

For the foregoing reasons, the Illinois State Bar Association and the individual members of its Committee on Unauthorized Practice of Law submit that the decision of the Illinois Supreme Court was correct, and that this Court should affirm that decision.

Respectfully submitted,

BERNARD H. BERTRAND,
234 Collinsville Avenue,
East St. Louis, Illinois,
Counsel for Respondents.

APPENDIX.



APPENDIX A.

Workmen's Compensation Act.

§ 138.16 Rules and Orders—Depositions—Subpoenas—Hospital Records—Court Reporter—Fees and Charges.

The Commission shall make and publish rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed *prima facie* reasonable and valid.

* * * * *

The Commission shall have the power to determine the reasonableness and fix the amount of any fee of compensation charged by any person, including attorneys, physicians, surgeons and hospitals, for any service performed in connection with this Act, or for which payment is to be made under this Act or rendered in securing any right under this Act. 1951, July 9, Laws 1951, p. 1060, § 16, as amended 1957, July 11, Laws 1957, p. 2610, § 1; 1959, July 21, Laws 1959, p. 1733, § 1.

138.19, Judicial Review—Certiorari—Scire Facias—Certification of Record by Commission—Cost of Record.

(1) Except in cases of claims against the State of Illinois, in which case the decision of the Commission shall not be subject to judicial review, the Circuit Court of the county where any of the parties defendant may be found, or if none of the parties defendant can be found in this State then the Circuit Court of the county where the accident occurred, shall by writ of certiorari to the Commission have power to review all questions of law and fact presented by such record.

* * * * *

Bond—Determination on Certiorari—Review by Supreme Court—Supersedeas and Stay—Majority Rule.

(2)

* * * * *

Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon the filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for the filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court.

* * * * *

Sec. 138.19 Appointment of examining physician—Fees of attorneys and physicians.

(c) The Commission may appoint, at its own expense, a duly qualified, impartial physician to examine the injured employee and report to the Commission. The fee for this service shall not exceed \$5 and traveling expenses, but the Commission may allow additional reasonable amounts in extraordinary cases.

The fees and payment thereof of all attorneys and physicians for services authorized by the Commission under this Act, shall, upon request of either the employer or the employee or the beneficiary affected, be subject to the review and decision of the Commission.

* * * * *

29 USCA, § 141. Short title; Congressional declaration of purpose and policy.

(a) This chapter may be cited as the "Labor Management Relations Act, 1947."

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce. June 23, 1947, c. 120, § 1, 61 Stat. 136.

* * * * *

APPENDIX B.

Exhibit A.

Report to Attorney on Accidents, Legal Department,
U. M. W. of A., District No. 12.

Read this carefully and when filled out mail to Legal Department, District 12, U. M. W. of A., 601 United Mine Workers Building, Springfield, Illinois.

1. See that notice of every accident and claim for compensation is made upon the company within 30 days. (In hernia cases notice and claim must be made in 15 days.)

2. Compensation is not due in injury cases until three weeks after the injury. Do not make this report until a reasonable time has elapsed after compensation is due, and then only after demand on the company has been made, and either no compensation is paid, or not a sufficient amount.

3. The purpose of making reports in injury cases is to bring to the attorney's attention cases where compensation is not paid when due, or where compensation is not adequate in amount, or where compensation payments are discontinued before it is proper so to do; or where compensation payments have been discontinued and there yet remains compensation due for: 1—Temporary total, being time of inability to perform any work; 2—Medical, surgical and hospital services; 3—Partial incapacity, being the period when only partial earnings are possible; 4—Loss of a member, such as finger, toe, leg, hand, etc.; 5—Permanent disfigurement to head, hands or face; 6—Partial loss of the use of finger, hand, arm, foot or leg; and, 7—Complete permanent disability.

4. Report all death cases not later than ten days thereafter.

5. It is useless to send these reports unless all questions are fully answered.

(Please Print)

Date of Report.....

1. Full name of injured or deceased.....

2. Address.....Telephone No.....
Local Union No.....

3. Number of children under eighteen at time of accident

4. Date of injury.....

5. Correct Name and Address of Company operating mine, number and nickname of mine, if any.....

6. Nature of work person engaged in at time of accident; describe and give in detail injury or injuries sustained, whether arm, leg, or eye (right or left). Give any disfigurement to head, hands, or face. State if there is any partial incapacity for work.....
.....
.....
.....
.....
.....

7. Did Company furnish all medical and hospital attention?

8. When did injured return to work, or when will he be able to return to work.....
.....

9. Regular work of injured.....

10. Has any compensation been paid? If so, how much and at what rate per week.....
.....

11. Date of service on the Company of notice of accident?

12. If no notice was given, did accident come to knowledge of some officer of the Company and to whom and when?

13. Day or night shift?.....

14. Describe any previous injury?.....

15. When?

16. Where?

17. What?

18. Any compensation collected?

Date of this report.....

Reported by

Signed

Address

Local Union No.

Exhibit B.

Letterhead of United Mine Workers of America.

September 23, 1959

To Local Union Officers and Members

Board Member District 4

District 12, U. M. W. of A.

Dear Sirs and Brothers:

It has been brought to our attention that some of our members are not properly apprised as to the period allowed for filing claims under the Workmen's Compen-

sation Law. Therefore, we would like to call to your attention that the Industrial Commission has certain requirements that must be met before a claim can be properly processed before it.

1. The injured employee must make a report to the company on all hernia cases within 15 days of the date of the accident. Otherwise, the claim is barred.

2. All other accidents must be reported promptly to the company, but not to exceed 45 days from the date of the accident. Otherwise, the claim is barred.

3. We must receive your Report to Attorney on Accidents in time to file your claim with the Industrial Commission within one year of the date of the accident, or one year from the date of the last compensation check. Otherwise, the claim is barred.

However, we insist upon Accident Reports being filed with us promptly when the man is released from medical care, or, in any event, he cannot extend his filing time by continuing under medical care. A good rule to follow is to file all claims with us promptly. We are enclosing some Accident Report forms, and ask that you write us when you need a further supply.

We hope the Local Union Officials will designate someone at each Local to be responsible for seeing that our members' rights are protected under the Law. Let us do everything in our power not to allow any of our members to have their claims barred for failure to file accident reports within the proper time.

With kind personal regards,

Very truly yours,

M. J. Hanagan,
Attorney.

Exhibit C.

Letterhead of United Mine Workers of America.

September 26, 1963

To the Officers and Members,
Local Unions in District 12
United Mine Workers of America

Dear Sirs and Brothers:

We are pleased to notify our membership that Mr. Stuart Traynor, Attorney at Law, will have charge of the Workmen's Compensation cases for members of District 12, United Mine Workers of America, effective October 1, 1963. He fills the vacancy created by the death of our former attorney, Mr. M. J. Hanagan.

Mr. Traynor will service our Legal Department through offices at the District Headquarters, Room 601, United Mine Workers' Building in Springfield, and our office in the Elks' Building, West Frankfort.

Accident reports should be mailed to him at the office in your respective area. Compensation cases will be filed and handled through the Industrial Commission of Illinois as in the past.

Very truly yours,

Joe Shannon,
Acting President.

IS:RJ

APPENDIX C.

American Bar Association

Standing Committee on Professional Ethics

Re: Informal Opinion No. 469 12/26/61

Employer, Association or Union Agreeing to Pay Legal Expenses of Employee or Member

You have forwarded to us a letter from Mr. (name) in which he inquires if there is anything unethical in any of the following situations:

(1) An employer agrees to pay the legal expenses of any employee who retains an attorney (a) to perform any work of a civil nature (including, but not being limited to, writing wills, defending negligence actions, etc.); (b) to defend the employee on any criminal charge except a felony.

(2) An association agrees to do the same for any member of the association.

(3) A Labor Union agrees to do the same for any Union member.

From an ethical standpoint, all of the above situations appear to be similar, and they will therefore be dealt with together rather than singly.

We gather from your reference to "the legal expenses of any employee who retains an attorney" that in each case the attorney is selected and employed by the employee or member, and has no responsibility to the employer, association or union, which merely pays his fee and expenses.

Canon 35 says:

“A lawyer’s relation to his client should be personal, and the responsibility should be direct to the client.”

The mere fact that the client is to be reimbursed for his legal expenses does not destroy this relationship, so long as that is all that is involved. On the other hand where the lawyer is selected and employed as well as paid by the employer or association to represent its employees or members, the employment may well be unethical. See Opinions 3, 31, 35, 41, 56, 98 and Informal Opinions 317 and 319.

We therefore hold that there is nothing unethical in the situations which you describe so long as the participation of the employer, association or union is confined to payment of or reimbursement for legal expenses only.

APPENDIX D.

Formal Opinion 282

(May 27, 1950)

An attorney may accept employment from an insurance company to represent the company's insureds within the limits of the policy without the request or approval of the insured.

An attorney who is employed by an insurance company to prosecute the company's subrogation claim against a third party may simultaneously prosecute the insured's claim for the amount not recoverable under his insurance if the attorney is retained and compensated directly by the insured.

An attorney may defend for a fee a person sued in a "public liability and property damage" action brought by a third party when at the same time he represents the "collision" insurance company and the insured in a cross-action against such third party.

Canons Interpreted: Professional Ethics 6, 27, 34, 35, 47

A lawyer, employed and compensated by an automobile insurance company, which holds a standard contract of insurance with an insured, may with propriety:

A. Defend the insured in an action brought by a third party without making any charge to the insured;

B. Prosecute an action for the insured against a third party, upon a fee basis, along with a subrogation action by the insurance company;

C. Defend for a fee a person sued in a "Public Liability and Property Damage" action brought by a third party when at the same time he represents

the "Collision" insurance company and the insured in a cross-action against such third party.

The opinion of the Committee was stated by Mr. Brucker, Messrs. Drinker, Jackson, Jones, F. M. Miller, S. Miller, Jr. and White concurring.

The Grievance Committee of The Toledo Bar Association has presented several questions to this Committee with respect to representation of an insured by a lawyer employed and compensated by an insurance company. These questions are as follows:

1. May an attorney, employed by an insurance company exclusively, on a salary basis, prosecute subrogation claims for both the portion recoverable by the insurance company and the portion recoverable by the assured under a deductible policy?

2. May said attorney charge a fee to the assured based upon the assured's pro-rata share of the amount of recovery?

3. May said attorney defend the assured in action brought by a third party against the assured?

4. May said attorney charge a fee for defending the assured in the action referred to in No. 3? The attorney referred to in this question is employed by the insurance company which carried the *collision* coverage on the assured's car.

5. May an attorney, employed by an insurance company exclusively, upon a salary basis, defend law suits against assureds on behalf of the insurance company, within the limits of the policy, without making any charge to the assured?

6. May an insurance company employ an attorney to defend law suits against assureds, within the limits of the policy, without the request or approval of the assured?

We shall first consider questions 5 and 6 together because of the relevancy of the answers to the other questions presented. The inquirer adds the following comment:

It is the writer's notion that questions 5 and 6 are intended to raise the issue as to whether an insured should be permitted to retain his own counsel, who would be reimbursed by the insurance company, and also whether or not the insurance company in utilizing the services of its own attorney-employee or in employing independent counsel is, in effect, practicing law.

Canon 35 of the Canons of Professional Ethics provides:

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. . . .

Canon 47, which is complementary to *Canon 35*, provides:

No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.

Any answer to these interrogatories must of course consider the relationship of the parties created by the contract of insurance.

The standard policy of automobile insurance requires the following duties from the insurance company:

(a) That it shall defend any suit against the insured alleging injury and claiming damages;

(b) That it shall pay any judgment rendered against the insured up to the applicable limitation of liability under the policy.

(c) That it shall pay all expenses incurred by it and all taxed costs and interest accrued after entry of judgment.

The standard policy of automobile insurance requires the following duties from the insured:

(1) To give the insurance company prompt notice of the accident, claim or suit.

(2) To give assistance and cooperation in opposing such claim or suit.

(3) To subrogate the insurance company for any amount paid by it to the insured.

From an analysis of their respective undertakings it is evident at the outset that a community of interest exists between the company and the insured growing out of the contract of insurance with respect to any action brought by a third person against the insured within the policy limitations. The company and the insured are virtually one in their common interest. The requirement that the insurance company shall defend any such action contemplates that the company, because of its contractual liability and community of interest, shall take charge of the incidents of such defense including the supervising of the litigation. Whenever the insured is served with the court process as a defendant, the contract of insurance expressly requires him to forward such process to the company so that the company may provide the means of defense. It is elemental that this includes retaining and compensating a lawyer at the company's expense.

Under certain circumstances a person may by contract clothe another with power to retain a lawyer to conduct a defense. Especially may this be done when, as here, the power is coupled with an interest resulting from covenants of insurance. Under these circumstances the lawyer selected by the company to conduct the defense cannot be said to be "exploited" by the company under *Canon 35*. Nor can it be said that the lawyer is lending his services to the "unauthorized practice of law" under *Canon 47*. No profit inures to the company through the lawyer's employment and it is an incident of the main contract of insurance. The essential point of ethics involved is that the lawyer so employed shall represent the insured as his client with undivided fidelity as required by *Canon 6*.

"Consent and approval" to represent the insured are clearly implied when the insured complies with his reciprocal duty under the insurance contract by forwarding the court process to the insurance company. If the insured does not desire to avail himself of the company's obligation to defend the suit including counsel, together with payment of any judgment and costs, he is at complete liberty to renounce his rights under the insurance contract and employ independent counsel at his own expense.

For the foregoing reasons our answers to the 5th and 6th questions are in the affirmative with the qualifications stated.

The 1st and 2nd questions may be considered together. A lawyer employed by an insurance company may, of course, prosecute the company's subrogation claim against a third party, recoverable by the insurance company. Nor is there any conflict of interest within the meaning of *Canon 6* in the lawyer's prosecuting simultaneously the claim recoverable by the insured under a deductible policy—providing the lawyer does so on a fee basis paid by

the insured direct to the lawyer and not to the insurance company for such services. *Canon 34* prohibits division of fees with any lay organization and the lawyer's arrangement with the client must observe this requirement. Furthermore, under *Canon 27* the lawyer representing the insurance company in a subrogation claim is barred from soliciting or even suggesting that he might represent the insured upon his claim against a third party. He may accept such retainer only if voluntarily proffered by the insured. Hence the answer to the 1st and 2nd questions is in the affirmative with the qualifications stated.

The 3rd and 4th questions are explained by the following comment from the inquirer:

With reference to questions 3 and 4, we have in mind the situation where an action is brought against the assured to recover damages, either to person or property, and the assured then files a cross petition for damages to his automobile in which the insurance company, which carried the collision coverage, joins as co-cross petitioner and sets up its subrogation claim. You can see that, under these circumstances, the attorney, as a salary-employee of the insurance company, is not only representing the insurance company and the insured in their claims for damages against the third party, but would also be defending the insured in the action of the third party against the insured. Although the insurance policy involved was only collision coverage and not public liability and property damage coverage.

Summarized, the questions are as follows: May a lawyer employed and compensated by an insurance company which carries only collision insurance, defend the insured in a "public-liability-and-property-damage" action brought by a third party against him, and at the same time act for the insured and the *collision* insurance company in a joint cross-petition against such third party?

There is nothing basically unethical in a lawyer, who is employed and compensated by a *collision* insurance company, defending a person in an action based upon damage to person and property brought by a third party. It is conceivable that there might be some conflict of interest between the "collision" insurance company and the insured, who is the same person who is made defendant in the "person-and-property-damage" action. Under *Canon 6* if such a conflict should arise, the lawyer could not represent both without "express consent of all concerned given after a full disclosure of the facts." However, if such consent were given there is no ethical obstacle to the lawyer representing both parties. Under *Canon 27* the lawyer for the "collision" insurance company is forbidden to solicit or even suggest to the insured that he might be retained to defend the "person-and-property-damage" action. However, if voluntarily proffered by the defendant in such action he may accept the retainer and proceed with the defense of the action brought by the third party, and at the same time may act for the insured and the collision insurance company in a joint cross-petition against such third party. Hence the answer to questions 3 and 4 is in the affirmative with the qualifications stated.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,

Petitioners,

v.

**ILLINOIS STATE BAR ASSOCIATION, AN ILLINOIS NOT
FOR PROFIT CORPORATION, et als.,**

Respondents.

**On Writ of Certiorari to the
Supreme Court of the State of Illinois**

**PETITIONERS' RESPONSE TO THE RESPECTIVE
MOTIONS TO FILE BRIEFS AS AMICUS CURIAE
AND
OBJECTIONS TO MOTIONS FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT**

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**I. PETITIONERS' RESPONSE TO THE RESPECTIVE MOTIONS
TO FILE BRIEFS AS AMICUS CURIAE**

Motions to file an *amicus curiae* brief have been filed by (1) American Federation of Labor and Congress of Industrial Organizations, (2) NAACP Legal Defense and Educational Fund, Inc. and the National Office for the

Rights of the Indigent, and (3) The State Bar of California.

In response to such Motions, Petitioners United Mine Workers of America, District 12, state that Petitioners are generally disposed not to object to the filing of such briefs, being of the view that the Court may desire to have such assistance as is offered therein. Hence, it had already indicated consent to the Movants, other than The State Bar of California. Refusal to give consent to it was prompted by Respondents' refusal to grant their consent to Movants American Federation of Labor and Congress of Industrial Organizations, and NAACP Legal Defense and Educational Fund, Inc., and the National Office for the Rights of the Indigent. Allowance by the Court to the first two named Movants to file their respective briefs would remove any objection Petitioners have to The State Bar of California's motion.

II. PETITIONERS' OBJECTIONS TO MOTIONS FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT.

Both NAACP Legal Defense and Educational Fund, Inc., and the National Office for the Rights of the Indigent, and The State Bar of California have moved for leave to participate in oral argument.

Petitioners object thereto for the reasons that argument of the instant case is upon the Court's summary calendar and this Court's Rule 44, paragraph 3, limits the time for argument to thirty (30) minutes a side. Since paragraph 7 of Rule 44 limits the total argument time to thirty minutes even though an *amicus curiae* is permitted to participate therein, any reduction of the thirty-minutes argument period would not permit a fair presentation of Petitioners' contentions. Petitioners request,

therefore, that the Court deny the respective motions to participate in oral argument herein.

Respectfully submitted,

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Dated: October, 1967

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PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Questions Presented

In the main, answers to Respondents' arguments are found in Petitioners' main brief. Inaccuracies therein prompt this Reply, wherein Petitioners will follow the sequence in Respondents' brief.

Foreword

Respondents object (Br. 2) to Petitioners' statement of Question 1 insofar as it asserts the attorney's salary is paid from membership dues. Petitioners' recital in

Answers to Interrogatories (R. 15) that "No portion of dues is allocated to pay attorney's salary" follows Petitioners' statement that "Dues of each member have been \$5.25 per month since November 1st, 1964" (R. 15). Read conjointly, the meaning is clear and positive. Reasonably interpreted it means, and could mean, only that of the dues paid by Petitioners, no amount thereof is allocated to pay the attorney's salary. But it does not mean, nor could it mean, that the attorney's salary is paid from some source other than membership dues. The fact that Respondents do not suggest the record shows any source other than membership dues emphasizes the total lack of validity to their objection, as well as their charge (Br. 2) that the "record refutes" Petitioners' statement of Question 1.

Statement of the Case

Respondents' statement of the case omits numerous facts appearing in Petitioners' statement (Br. 5-9). Some of the omissions are that the attorney's employment letter advised him he would represent an injured member "if he desires your services" but "If he is represented by other counsel you will immediately turn over his file to such counsel"; the attorney would "receive no further instructions or directions and have no interference from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent" (R. 19-20). Also omitted are undisputed facts that final determinations concerning settlements are made by claimants (R. 45); the full amount of settlements or awards is paid directly to the injured member; no deductions are taken therefrom; and neither the attorney, the district nor any officer receives any portion thereof (R. 16, 46, 62). Undisputed too is the

attorney's statement that he frequently suggested to injured members "they could employ other counsel if they wished" (R. 20, 51, 52).

Respondents' Statement of the Case points to a form of "Report to Attorney on Accident" which appears in the Appendix to their brief (pp. 42-44). This report, prepared by the injured person or someone under his direction (R. 58) after a reasonable time has elapsed when compensation is due and demand on the company has been made, is to bring to the attorney's attention cases where compensation is not paid when due, or is inadequate, or where payments are discontinued before it is proper so to do (see Respondents' Brief, p. 42). Another form referred to in the record and in Respondents' statement (Br. 8) is the *application for adjustment of claims* (R. 18), which is the form forwarded to the Industrial Commission. While Petitioners' attorney authorized his name to be signed to the applications for adjustment of claims by secretaries in the union offices, his deposition discloses that when asked "whether you might dictate it, to" employees in the office of, and paid by, District 12, the attorney replied, "That is the only way it is done generally speaking is that *they are dictated by me to the secretary*" (R. 36, 18).

ARGUMENT

I.

I., A. and B.

Citations of state authorities in Respondents' brief (pp. 14-15) are cases which are unrelated to labor unions and which did not discuss constitutional rights posed by this Court's *NAACP v. Button*, 371 U.S. 415 and *BRT v. Virginia State Bar*, 377 U.S. 1; and such cases all antedated *Button* and *Trainmen*.

Respondents stress that Illinois has many competent and successful practitioners before Illinois' Industrial Commission (Br. 19-20), but this was not a projected issue before the Illinois Supreme Court. That Court did not base its opinion on such an argument nor, as Respondents stress (Br. 17-19), upon whether an analysis of workmen's compensation cases before that Court reflected competency or incompetency on the part of Petitioners' attorney, or upon whether the arrangement fully advanced legitimate legal claims of coal miners.

Whether the volume of claims handled by one attorney, or the fact that Petitioners' attorney as an Illinois state senator spends a certain portion of his time in a legislative session or that he earns a salary from the State of Illinois as a senator are matters outside the complaint's allegations, as well as the proof in the trial court; they were not presented to the Illinois Supreme Court, as the record herein shows; and the Illinois Supreme Court's opinion, of which Petitioners complain to this Court, made no mention of them. They are totally *dehors* the record.

These irrelevancies are best manifested in the fact that the instant case was not instituted to mirror dissatisfaction of injured coal miners represented by the attorney selected to represent Petitioners, but it was initiated by a group of attorneys whose complaint does not even suggest that it has the imprimatur of a majority of the members of the State Bar Association.

What is pertinent, and this Respondents ignore, is that uncontradicted evidence establishes that injured coal miner members are not bound to use the attorney so selected by Petitioners. Petitioners' main brief (p. 32) asserts that the attorney's employment letter merely

makes the attorney available *if an injured employee "desires your services"*, but "If he is represented by other counsel you will immediately turn over his file to such counsel" (R. 19-20).

The invalidity of Respondents' challenge (Br. 27) of Petitioners' assertion that union members have free choice of an attorney by referring to the Elery D. Morse incident becomes unequivocal when tested by the record's showing: Initially Respondents' complaint charged that though Morse retained the services of attorneys to file his application for adjustment of his claim with the Industrial Commission, the District 12 attorney also filed a claim for Morse without his consent, approval, authorization or knowledge (R. 6); though Petitioners denied these allegations (R. 7-8) and their motion to strike them was denied (R. 8-10), the record does not disclose any attempt by Respondents to prove the allegations. Instead, the record discloses Respondents' motion to delete the Morse allegations. Petitioners objected thereto, asserting *inter alia* (R. 21) that Morse, an elderly man, "acting upon bad advice", *retained counsel who*, "well knowing that he had and was entitled to the free services of counsel provided by himself and his fellow employees, took, for themselves out of his award the sum of (\$1,795.00) *One Thousand Seven Hundred Ninety-Five Dollars*" and that the Morse averments "*should remain in the Complaint and the facts should be disclosed for the record as an apt illustration of the commercialism, and its attendant evils, the Plaintiffs are seeking to restore to the industrial accident field in the State of Illinois*" (R. 21). The trial court overruled Petitioners' objections and permitted the complaint to be amended by deleting the Morse allegations. (R. 21).

Petitioners do not contend that injured workmen may not pay an attorney a fee for services rendered in a workmen's compensation case. They do contend that by statute the Illinois Legislature deemed it essential to be protective of compensation awards. Statutes cited by Respondents (Br. 21-22) demonstrate clearly the legislative intent that attorneys' fees should be carefully scrutinized by the Industrial Commission and held at a minimum to the end that as much of the award as possible should find its way to the claimant or his beneficiaries. Clearly, the protection of coal miners' legal rights at a minimum cost is consonant with the philosophy of Illinois' workmen's compensation statute. Nothing therein is suggested by Respondents as reflecting legislative will or intent that Petitioners' legal aid plan violated its expressed protective policy. To the contrary, it must be presumed, in view of the plan's long existence, that the Illinois legislature knew of and sanctioned the plan by which laborers were able to procure awards at a minimum cost, rather than to pay 10 to 20 percent thereof which Respondents admit (Br. 21-22) the Industrial Commission has allowed.

It is pertinent that Section 19(c) of the Act, cited by Respondents (Br. 22), authorizes the payment of attorneys' fees "*for services authorized by the Commission under this Act*".

Respondents' argument (Br. 22-25) that the Labor Management Relations Act (29 USCA 141, *et seq.*) does not have within its purview the salaried lawyer arrangement considered by the Illinois Supreme Court overlooks the fact that the right of collective bargaining includes, as one of the conditions of employment, a labor union's right to demand workmen's compensation coverage in

relation to their employment. Certainly this right includes not only the right of employees "to consult with each other in a fraternal organization" and to "talk together freely as to the best course to follow" as this Court enunciated in *Trainmen*, 377 U.S. 1, 5-6, but also the right of a group of union members to assist each other in assuring legal assistance in the prosecution of a claim related to their employment.

I. C.

To argue, as Respondents' do (Br. 27-28), that it is appropriate for an insurer to provide and pay an insurer-selected attorney to represent an insured on the basis that "it is the insurance company's money", and yet press upon this Court that coal miners may not do so when their rights to consult with each other and select a spokesman from their number "who could be expected to give the wisest counsel" (377 U.S. 6) in carrying out a legal aid program are constitutionally and statutorily recognized under national labor policy, is indeed an incongruity. If freedom of choice in selecting an attorney is the guiding factor, as Respondents argue, it is indeed brash for Respondents to contend that coal miners in voluntary associations as a labor union may not choose an attorney to represent those of them in prosecuting their claims arising in their unfortunate periods of injury or resulting in death from employment, and yet, in contrast, assert that it is appropriate this alleged condemnation does not exist where an insurer selects and pays for counsel services rendered an insured because "it is the insurance company's money".

Most telling of the fallacy and abortiveness of Respondents' argument appears in their assertion that in the insurer-insured legal aid arrangement there is "a

community of interest growing out of the contract of insurance with respect to an action brought by a third party against the insured" (Br. 27); yet, as shown in Petitioners' brief (p. 33), that "community of interest" dissipates, as the American Bar Association's Committee on Professional Ethics and Grievance's Opinion 282 recites, "If the insured does not desire to avail himself of the company's obligation to defend the suit including counsel, . . . he is at complete liberty to *renounce his rights under the insurance contract* and employ independent counsel at his own expense". Yet, an injured coal miner, free to select and pay another attorney, is not required to give up any right he possesses.

Respondents' good faith is clouded when, in charging "that the individual miner is exploited to benefit the union" (Br. 28), they assiduously withhold from the Court and ignore the uncontradicted evidence that the full settlement or award is paid directly to the injured member; no deductions are taken therefrom; the attorney receives no part thereof; and neither the District nor any officer receives any portion of the award (R. 16, 46, 62; Pet. Br. 9). On the other hand, even Respondents admit (Br. 21-22) that, where fees are fixed by the Industrial Commission, from 10 to 20 percent of awards, are allowed. To this degree of course the awards are dissipated. Respondents' efforts herein, implemented by the Illinois Supreme Court's opinion and judgment herein, to impose upon a laboring man, at a time when he is suffering physical handicap as well as inability to earn a livelihood, the requirement of sharing with a lawyer whatever inadequate compensation he may receive, poses the *quaere* whether the instant litigation is an attempt to serve the selfish interests of members of the legal profession at the expense of injured workmen.

Respondents' thesis that exploitation of the coal miner would not exist if he is represented by an attorney other than Petitioners' choice finds full challenge in their citation (Br. 21, fn. 4) of *People ex rel. Chicago Bar Assn. v. Lally*, 313 Ill. 21, 144 N.E. 329 (1924) which gives in detail the charges of fraud by an attorney upon a compensation claimant in connection with an attorney's fee fixed by the Industrial Commission.

I. D.

Answers to Respondents' response to Petitioners' complaint that the injunctive decree lacks factual support are found in Petitioners' main brief (pp. 37-38).

Though Respondents challenge (Br. 29) Petitioners' citation of *State of Wyoming v. State of Colorado*, 286 U.S. 494, as authority that an injunctive decree should not be broader than the case warrants, it is noted that the opinion (p. 508) reads that "No showing appears to have been made indicative of any occasion at that time for a broader injunction. Of course, in the absence of such showing, a broader injunction was not justified".

Nor are Respondents' suggested limitations (Br. 30) free of Petitioners' objections set forth in their main brief. Even if the Court rejects Petitioners' contentions that employment of an attorney on a salary basis to represent injured workmen in compensation cases, the injunctive decree should be responsive to that violation and to that alone. Thus, the suggested language under (a) and (b) on page 30 of Respondents' brief, which goes beyond such violation, would find no factual support. No language in the suggestion would be warranted in any event other than "Employing attorneys on salary basis to represent its members with respect to Workmen's Compensation claims".

II.

Answers to Respondents' argument II. (Br. 30-36) are found in Petitioners' argument in their main brief (pp. 20-37).

III.

While the instant situation revealed a local problem within Illinois, the problem is not purely a local one within that State, as Respondents say (Br. 37); but United Mine Workers of America is a national organization operating throughout the anthracite and bituminous coal areas, and thus it is obvious that the situation is one of national interest rather than purely local interest.

CONCLUSION

For the reasons herein discussed, as well as those discussed in Petitioners' main brief, Petitioners submit that this Court should grant the relief contained in their main brief's Conclusion (p. 39).

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Dated: October, 1967

SUPREME COURT OF THE UNITED STATES

No. 33.—OCTOBER TERM, 1967.

United Mine Workers of America,
District 12, Petitioner,
v.
Illinois State Bar Association et al.

On Writ of Certiorari
to the Supreme
Court of Illinois.

[December 5, 1967.]

MR. JUSTICE BLACK delivered the opinion of the Court.

The Illinois State Bar Association filed this complaint to enjoin the United Mine Workers of America, District 12, from engaging in certain practices alleged to constitute the unauthorized practice of law. The essence of the complaint was that the Union had employed a licensed attorney on a salary basis to represent any of its members who wished his services to prosecute workmen's compensation claims before the Illinois Industrial Commission. The trial court found from facts that were not in dispute that employment of an attorney by the association for this purpose did constitute unauthorized practice and permanently enjoined the Union from "[e]mploying attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation Claims and any and all other claims which they may have under the statutes and laws of Illinois."¹ The

¹ In addition to the portion just quoted, the court's decree enjoins the Union from:

- "1. Giving legal counsel and advice
- "2. Rendering legal opinions
- "3. Representing its members with respect to Workmen's Compensa-

2 MINE WORKERS v. ILLINOIS BAR ASSN.

Illinois Supreme Court rejected the Mine Workers' contention that this decree abridged their freedom of speech, petition, and assembly under the First and Fourteenth Amendments and affirmed. We granted certiorari, 386 U. S. 941 (1967), to consider whether this holding conflicts with our decisions in *Railroad Trainmen v. Virginia Bar*, 377 U. S. 1 (1964), and *NAACP v. Button*, 371 U. S. 415 (1963).

As in the *Trainmen* case, we deal here with a program that has been in successful operation for the Union members for decades. Shortly after enactment of the Illinois Workmen's Compensation Statute² in 1912, the mine workers realized that some form of mutual protection was necessary to enable them to enjoy in practice the many benefits that the statute promised in theory. At the Union's 1913 convention the secretary-treasurer reported that abuses had already developed: "the interests of the members were being juggled and even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees." In response to this situation the convention instructed the Union's incoming executive board to establish the "legal department" which is now attacked for engaging in the unauthorized practice of law.

The undisputed facts concerning the operation of the Union's legal department are these. The Union employs one attorney on a salary basis to represent members and

sation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois.

"4. [Quoted above]

"5. Practicing law in any form either directly or indirectly."

It is conceded that the Union's employment of an attorney was the basis for these other provisions of the injunction, and it was not claimed that the Union was otherwise engaged in the practice of law. Our opinion and holding is therefore limited to this one aspect of the Union's activities.

² Ill. Rev. Stat., c. 38, § 138 (1963).

their dependents in connection with claims for personal injury and death under the Illinois Workmen's Compensation Act. The terms of the attorney's employment, as outlined in a letter from the acting president of the Union to the present attorney, include the following specific provision: "You will receive no further instructions or directions and have no interference from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent." The record shows no departure from this agreement. The Union provides injured members with forms entitled "Report to Attorney on Accidents" and advises them to fill out these forms and send them to the Union's legal department. There is no language on the form which specifically requests the attorney to file with the Industrial Commission an application for adjustment of claim on behalf of the injured member, but when one of these forms is received, the attorney presumes that it does constitute such a request. The members may employ other counsel if they desire, and in fact the Union attorney frequently suggests to members that they can do so. In that event the attorney is under instructions to turn the member's file over to the new lawyer immediately.

The applications for adjustment of claim are prepared by secretaries in the Union offices, and are then forwarded by the secretaries to the Industrial Commission.³ After the claim is sent to the Commission, the attorney prepares his case from the file, usually without discussing the claim with the member involved. The attorney determines what he believes the claim to be worth,

³ The Union's present attorney, who was the only witness on this matter, testified that the application to be filed with the Industrial Commission was dictated by him to the secretaries, who prepared this form under his direction. R. 18, 40. See also R. 58 (Union's answers to interrogatories).

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presents his views to the attorney for the respondent coal company during prehearing negotiations, and attempts to reach a settlement. If an agreement between opposing counsel is reached, the Union attorney will notify the injured member, who then decides, in light of his attorney's advice, whether or not to accept the offer. If no settlement is reached, a hearing is held before the Industrial Commission, and unless the attorney has had occasion to discuss a settlement proposal with the member, this hearing will normally be the first time the attorney and his client come into personal contact with each other. It is understood by the Union membership, however, that the attorney is available for conferences on certain days at particular locations. The full amount of any settlement or award is paid directly to the injured member. The attorney receives no part of it, his entire compensation being his annual salary paid by the Union.

The Illinois Supreme Court rejected petitioner's contention that its members had a right, protected by the First and Fourteenth Amendments, to join together and assist one another in the assertion of their legal rights by collectively hiring an attorney to handle their claims. That court held that our decision in *Railroad Trainmen v. Virginia Bar, supra*, protected plans under which workers were advised to consult specific attorneys, but did not extend to protect plans involving an explicit hiring of such attorneys by the union. The Illinois court recognized that in *NAACP v. Button, supra*, we also held protected a plan under which the attorneys recommended to members were actually paid by the association, but the Illinois court viewed the *Button* case as concerned chiefly with litigation that can be characterized as a form of political expression. We do not think our decisions in *Trainmen* and *Button* can be so narrowly limited. We hold that the freedom of speech,

assembly, and petition guaranteed by the First and Fourteenth Amendments gives petitioner the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights.

We start with the premise that the rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable." *Thomas v. Collins*, 323 U. S. 516, 530 (1945). See *De Jonge v. Oregon*, 299 U. S. 353, 364 (1937). The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil. *Schneider v. State*, 308 U. S. 147 (1939); *Cantwell v. Connecticut*, 310 U. S. 296 (1940).

The foregoing were the principles we invoked when we dealt in the *Button* and *Trainmen* cases with the right of an association to provide legal services for its members. That the States have broad power to regulate the practice of law is, of course, beyond question. See *Trainmen*, *supra*, at 6. But it is equally apparent that broad rules

* The freedoms protected against federal encroachment by the First Amendment are entitled under the Fourteenth Amendment to the same protection from infringement by the States. See, e. g., *New York Times Co. v. Sullivan*, 376 U. S. 254, 276-277 (1964), and cases there cited.

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framed to protect the public and to preserve respect for the administration of justice can in their actual operation significantly impair the value of associational freedoms. Thus in *Button*, *supra*, we dealt with a plan under which the NAACP not only advised prospective litigants to seek the assistance of particular attorneys but in many instances actually paid the attorneys itself. We held the dangers of baseless litigation and conflicting interests between the association and individual litigants far too speculative to justify the broad remedy invoked by the State, a remedy that would have seriously crippled the efforts of the NAACP to vindicate the rights of its members in court. Likewise in the *Trainmen* case there was a theoretical possibility that the union's interests would diverge from that of the individual litigant members, and there was a further possibility that if this divergence ever occurred, the union's power to cut off the attorney's referral business could induce the attorney to sacrifice the interests of his client. Again we ruled that this very distant possibility of harm could not justify a complete prohibition of the Trainmen's efforts to aid one another in assuring that each injured member would be justly compensated for his injuries.

We think that both the *Button* and *Trainmen* cases are controlling here. The litigation in question is, of course, not bound up with political matters of acute social moment, as in *Button*, but the First Amendment does not protect speech and assembly only to the extent it can be characterized as political. "Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest." *Thomas v. Collins*, *supra*, at 531. And of course in *Trainmen*, where the litigation in question was, as here, solely designed to compensate the victims of industrial accidents, we

rejected the contention made in dissent, see 377 U. S., at 10 (Clark, J.), that the principles announced in *Button* were applicable only to litigation for political purposes. See 377 U. S., at 8.

Nor can the case at bar be distinguished from the *Trainmen* case in any persuasive way.⁵ Here, to be sure, the attorney is actually paid by the Union, not merely the beneficiary of its recommendations. But in both situations the attorney's economic welfare is dependent to a considerable extent on the good will of the union, and if the temptation to sacrifice the client's best interests is stronger in the present situation, it is stronger in a virtually imperceptible degree. In both cases, there was absolutely no indication that the theoretically imaginable divergence between the interests of union and member ever actually arose in the context of a particular lawsuit; indeed in the present case the Illinois Supreme Court itself described the possibility of conflicting interests as, at most, "conceivable[e]."

It has been suggested that the Union could achieve its goals by referring members to a specific lawyer or lawyers and then reimbursing the members out of a common fund for legal fees paid. Although a committee of the American Bar Association, in an informal opinion, may have approved such an arrangement,⁶ we think the

⁵ It is irrelevant that the litigation in *Trainmen* involved statutory rights created by Congress, while the litigation in the present case involved state-created rights. Our holding in *Trainmen* was based not on State interference with a federal program in violation of the Supremacy Clause but rather on petitioner's freedom of speech, petition, and assembly under the First and Fourteenth Amendments, and this freedom is, of course, as extensive with respect to assembly and discussion related to matters of local as to matters of federal concern.

⁶ American Bar Association, Standing Committee on Professional Ethics, Informal Opinion No. 469 (December 26, 1961). The ABA committee did not in fact consider the problem presented where the union not only pays the fee but also recommends the specific attor-

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view of the Illinois Supreme Court is more relevant on this point. In the present case itself the Illinois court stressed that where a union recommends attorneys to its members, "any 'financial connection of any kind'" between the union and such attorneys is illegal.⁷ It cannot seriously be argued, therefore, that this alternative arrangement would be held proper under the laws of Illinois.

The decree at issue here thus substantially impairs the associational rights of the mine workers and is not needed to protect the State's interest in high standards of legal ethics. In the many years the program has been in operation, there has come to light, so far as we are aware, not one single instance of abuse, of harm to clients, of any actual disadvantage to the public or to the profession, resulting from the mere fact of the financial connection between the Union and the attorney who represents its members. Since the operative portion of the decree prohibits any financial connection between the attorney and the Union, the decree cannot stand; and to the extent any other part of the decree forbids this arrangement it too must fall.

The judgment and decree are vacated and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

MR. JUSTICE STEWART concurs in the result upon the sole ground that the disposition of this case is controlled by *Brotherhood of Railroad Trainmen v. Virginia State Bar*, 377 U. S. 1.

ney, and it strongly implied that it would reach a different result in such a situation: "there is nothing unethical in the situations which you describe so long as the participation of the employer, association or union is confined to payment of or reimbursement for legal expenses only."

⁷ — Ill. 2d —, —, 219 N. E. 2d 503, 506 (1966), quoting *In re Brotherhood of RR Trainmen*, 13 Ill. 2d 391, 150 N. E. 2d 163 (1958).

SUPREME COURT OF THE UNITED STATES

No. 33.—OCTOBER TERM, 1967.

United Mine Workers of America, District 12, Petitioner, v. Illinois State Bar Association et al.	}	On Writ of Certiorari to the Supreme Court of Illinois.
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[December 5, 1967.]

MR. JUSTICE HARLAN, dissenting.

This decision cuts deeply into one of the most traditional of state concerns, the maintenance of high standards within the state legal profession. I find myself unable to subscribe to it.

The Canons of Professional Ethics of the Illinois State Bar Association forbid the unauthorized practice of law by any lay agency.¹ The Illinois Supreme Court, acting in light of these canons and in exercise of its common-law power of supervision over the Bar,² prohibited the United Mine Workers of America, District 12, from employing a salaried lawyer to represent its members in workmen's compensation actions before the Illinois Industrial Commission. I do not believe that this regulation of the legal profession infringes upon the rights of speech, petition, or assembly of the Union's members, assured by the Fourteenth Amendment.

¹ Canons 35, 47, Canons of Ethics of the Illinois State Bar Association. These canons are identical to the corresponding canons of the American Bar Association.

² Even in the absence of applicable statutes, state courts have held themselves empowered to promulgate and enforce standards of professional conduct drawn from the common law and the closely related prohibitions of the Canons of Ethics. See, e. g., *In re Maclub of America, Inc.*, 295 Mass. 45, 3 N. E. 2d 272, and cases therein cited. See generally Drinker, *Legal Ethics* 26-30, 35-48.

I.

As I stated at greater length in my dissenting opinion in *NAACP v. Button*, 371 U. S. 415, 448, 452-455, the freedom of expression guaranteed against state interference by the Fourteenth Amendment includes the liberty of individuals not only to speak but also to unite to make their speech effective. The latter right encompasses the right to join together to obtain judicial redress. However, litigation is more than speech; it is conduct. And the States may reasonably regulate conduct even though it is related to expression. The pivotal point is how these competing interests should be resolved in this instance.

My brethren are apparently in accord. The majority begins by noting that this activity of the Union is related to expression and therefore of a type which may be sheltered from state regulation by the Constitution. But the majority's inquiry does not stop there; it goes on to examine the state concerns and concludes that the decree "is not necessary to protect the State's interest in high standards of legal ethics." See p. —, *ante*.³ I agree,

³ This weighing of the competing interests involved is the same approach as that used in *NAACP v. Button*, 371 U. S. 415, and in *Railroad Trainmen v. Virginia State Bar*, 377 U. S. 1. However, since a new balance must be struck whenever the competing interests are significantly different, this decision is not controlled by those cases. The union members in this case are not asserting legal rights which stem either from the Constitution or from a federal statute, sources of origin stressed respectively in *Button*, see 371 U. S., at 429-431, 441-444, and in *Railroad Trainmen*, see 377 U. S., at 3-6. Furthermore, the union plan at issue here differs from the referral practice involved in *Railroad Trainmen* because it involves the services of a union-salaried lawyer.

Similarly, the interests in this case are very different from those in cases involving legal aid to the indigent. The situation of a salaried lawyer representing indigent clients was expressly distinguished by the court below. See — Ill. 2d —, —, 219 N. E. 2d 503, 508.

of course, with this "balancing" approach. See, e. g., *NAACP v. Button*, *supra*, at 452-455 (dissenting opinion); *Konigsberg v. California Bar*, 366 U. S. 36, 49-51; *Talley v. California*, 360 U. S. 60, 66 (concurring opinion). Indeed, I cannot conceive of any other sound method of attacking this type of problem. For if an "absolute" approach were adopted, as some members of this Court have from time to time insisted should be so with "First Amendment" cases,⁴ and the state interest in regulation given no weight, there would be no apparent reason why, for example, a group might not employ a layman to represent its members in court or before an agency because it felt that his low fee made up for his deficiencies in legal knowledge. Cf. *Hackin v. Arizona*, — U. S. — (DOUGLAS, J., dissenting).

II.

Although I agree with the balancing approach employed by the majority, I find the scales tip differently. I believe that the majority has weighed the competing interests badly, according too much force to the claims of the Union and too little to those of the public interest at stake. As indicated previously, the interest of the Union stems from its members' constitutionally protected right to seek redress in the courts or, as here, before an agency. By the plan at issue, the Union has sought to make it easier for members to obtain benefits under the Illinois Workmen's Compensation Act.⁵ The plan is evidently designed to help injured union members in three ways: (1) by assuring that they will have knowledge of and access to an attorney capable of handling their claims; (2) by guaranteeing that they will

⁴ See, e. g., *Lathrop v. Donohue*, 367 U. S. 820, 865, 871-874 (dissenting opinion); *Konigsberg v. California Bar*, 366 U. S. 36, 56, 60-71 (dissenting opinion).

⁵ Ill. Rev. Stat., c. 38, § 138 (1963).

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not be charged excessive legal fees; and (3) by protecting them from crippling, even though reasonable, fees by making legal costs payable collectively through union dues. These are legitimate and laudable goals. However, the union plan is by no means necessary for their achievement. They all may be realized by methods which are proper under the laws of Illinois.

The Illinois Supreme Court in this case repeated its statement in a prior case that a union may properly make known to its members the names of attorneys it deems capable of handling particular types of claims.⁶ Such union notification would serve to assure union members of access to competent lawyers.

As regards the protection of union members against the charging of unreasonable fees, a fully efficient safeguard would seem to be found in the Illinois Workmen's Compensation Act itself. An amendment to the Act in 1915, shortly after its initial passage,⁷ provided that the Industrial Commission

"shall have the power to determine the reasonableness and fix the amount of any fee or compensation charged by any person for any service performed in connection with this Act, or for which payment is to be made under this Act or rendered in securing any right under this Act."⁸

In 1927, the words "including attorneys, physicians, surgeons and hospitals" were added following the phrase "or compensation charged by any person."⁹ Thus, there would now appear to be no reasonable grounds for fear-

⁶ See — Ill. 2d, at —, 219 N. E. 2d, at 506-507. The earlier Illinois decision referred to was *In re Brotherhood of R. R. Trainmen*, 13 Ill. 2d 391, 150 N. E. 2d 163.

⁷ It may be significant that the union plan was instituted in 1913, prior to this amendment of the Act. See p. —, *ante*.

⁸ Ill. Laws 400 (1915).

⁹ Ill. Laws 497 (1927).

ing that union members will be subjected to excessive legal fees.

The final interest sought to be promoted by the present plan is in the collective payment of legal fees. That objective could presumably be realized by imposing assessments on union members for the establishment of a fund out of which injured members would be reimbursed for their legal expenses.¹⁰ There is no reason to believe that this arrangement would be improper under Illinois law, since the union's obligation would run only to the member and there would be no financial connection between union and attorney.

The regulatory interest of the State in this instance is found in the potential for abuse inherent in the union plan. The plan operates as follows. The union employs a licensed lawyer on a salary basis¹¹ to represent members and their dependents in connection with their claims under the Workmen's Compensation Act. Members are told that they may employ another attorney if they wish. The attorney is selected by the Executive Board of District 12, and the terms of employment specify that the attorney's sole obligation is to the person represented and that there will be no interference by the Union. Injured union members are furnished by the Union with a form which advises them to send the form to the Union's legal department. Upon receipt of the form, the attorney assumes it to constitute a request that he file on behalf of the injured member a claim with the Industrial Commission, though no such explicit request is contained in the form. The application for compensation is prepared by secretaries in the union offices, and

¹⁰ Cf. American Bar Association, Committee on Professional Ethics, Informal Opinion No. 469 (December 26, 1961) (union may reimburse member client for legal expenses).

¹¹ The salary paid at the time of this action was \$12,400 per annum.

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when complete it is sent directly to the Industrial Commission. In most instances, the attorney has, neither seen nor talked with the union member at this stage, though the attorney is available for consultation at specified times. After the filing of the claim and prior to the hearing before the Commission, the attorney prepares for its presentation by resorting to his file and to the application, usually without conferring with the injured member. Ordinarily the member and this attorney first meet at the time of the hearing before the Commission.

The attorney determines what he thinks the claim to be worth and attempts to settle with the employer's attorney during prehearing negotiations. If agreement is reached, the attorney recommends to the injured member that he accept the result. If no settlement occurs, a hearing on the merits is held before the Industrial Commission. The full amount of the settlement or award is paid to the injured member. The attorney retains for himself no part of the amount received, his sole compensation being his annual salary paid by the Union.

This union plan contains features which, in my opinion, Illinois may reasonably consider to present the danger of lowering the quality of representation furnished by the attorney to union members in the handling of their claims. The union lawyer has little contact with his client. He processes the applications of injured members on a mass basis. Evidently, he negotiates with the employer's counsel about many claims at the same time. The State was entitled to conclude that removed from ready contact with his client, insulated from interference by his actual employer, paid a salary independent of the results achieved, faced with a heavy caseload,¹² and very

¹² The attorney employed by the Union in this case handled more than 400 workmen's compensation claims a year.

possibly with other activities competing for his time,¹³ the attorney will be tempted to place undue emphasis upon quick disposition of each case. Conceivably, the desire to process forms rapidly might influence the lawyer not to check with his client regarding ambiguities or omissions in the form, or to miss facts and circumstances which face-to-face consultation with his client would have brought to light. He might be led, so the State might consider, to compromise cases for reasons unrelated to their own intrinsic merits, such as the need to "get on" with negotiations or a promise by the employer's attorney of concessions relating to other cases. The desire for quick disposition also might cause the attorney to forgo appeals in some cases in which the amount awarded seemed unusually low.¹⁴

III.

Thus, there is solid support for the Illinois Supreme Court's conclusion that the union plan presents a danger of harm to the public interest in a regulated bar. The reasonableness of this result is further buttressed by the numerous prior decisions, both in Illinois and elsewhere, in which courts have prohibited the employment of salaried attorneys by groups for the benefit of their members.¹⁵

¹³ The attorney employed by the Mine Workers was also an Illinois state senator and had a private practice other than the Mine Workers' representation.

¹⁴ Of 351 workmen's compensation cases, from all sources, which were appealed to the Illinois courts during the period 1936-1967, only one was appealed by a miner affiliated with District 12. No such miner has appealed since 1942. See Respondent's Brief, pp. 17-18.

¹⁵ See, e. g., *People ex rel. Courtney v. Association of Real Estate Tax-payers*, 354 Ill. 102, 187 N. E. 823; *In re Machub of America, Inc.*, 295 Mass. 45, 3 N. E. 2d 272, and cases therein cited; *Richmond Assn. of Credit Men, Inc. v. Bar Assn. of Richmond*, 167 Va. 327, 189 S. E. 153. The Canons of Ethics of the American Bar

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The majority dismisses the State's interest in regulation by pointing out that there have been no proven instances of abuse or actual disadvantage to union members resulting from the operation of the union plan. See p. —, *ante*. But the proper question is not whether this particular plan has in fact caused any harm.¹⁶ It is, instead, settled that in the absence of any dominant opposing interest a State may enforce prophylactic measures reasonably calculated to ward off foreseeable abuses, and that the fact that a specific activity has not yet produced any undesirable consequences will not exempt it from regulation. See, *e. g.*, *Hoopeston Canning Co. v. Cullen*, 318 U. S. 313, 321-322; *Daniel v. Family Sec. Life Ins. Co.*, 336 U. S. 220, 222-225.

It is also irrelevant whether we would proscribe the union plan were we sitting as state judges or state legislators. The sole issue before us is whether the Illinois Supreme Court is forbidden to do so because the plan unduly impinges upon rights guaranteed to the Union's members by the Fourteenth Amendment. Since the finding that the union plan presents dangers to the public and legal profession is not an arbitrary one, and since the limitation upon union members is so slight, in view of the permissible alternatives still open to them, I would hold that there has been no denial of constitutional rights occasioned by Illinois' prohibition of the plan.

Association have also been interpreted as forbidding arrangements of the kind at issue here. See American Bar Association, Committee on the Unauthorized Practice of Law, Informative Opinion No. A of 1950, 36 A. B. A. J. 677.

¹⁶ It is possible that the operation of the plan did result in union members' receiving a lower quality of legal representation than they otherwise would have had. For example, the Mine Workers' present attorney recovered an average of \$1,160 per case, while his predecessor secured an advantage of \$1,350, even though the permissible rates of recovery were lower during the predecessor's tenure. See Record, at 53-54, 58-60; Brief for Respondent, p. 18. See also n. 14, *supra*.

IV.

This decision, which again manifests the peculiar insensitivity to the need for seeking an appropriate constitutional balance between federal and state authority that in recent years has characterized so many of the Court's decisions under the Fourteenth Amendment, puts this Court more deeply than ever in the business of supervising the practice of law in the various States. From my standpoint, what is done today is unnecessary, undesirable, and constitutionally all wrong. In the absence of demonstrated arbitrary or discriminatory regulation, state courts and legislatures should be left to govern their own Bars, free from interference by this Court.¹⁷ Nothing different accords with longstanding and unquestioned tradition and with the most elementary demands of our federal system.

I would affirm.

¹⁷ It has been suggested both in this case and elsewhere, cf. *Hackin v. Arizona*, — U. S. — (DOUGLAS, J., dissenting), that prevailing Canons of Ethics and traditional customs in the legal profession will have to be modified to keep pace with the needs of new social developments, such as the Federal Poverty Program. That may well be true, but such considerations furnish no justification for today's heavy-handed action by the Court. The American Bar Association and other bodies throughout the country already have such matters under consideration. See, e. g., 1964 ABA Reports 381-383 (establishment of Special Committee on Ethical Standards); 1966 ABA Reports 589-594 (Report of Special Committee on Availability of Legal Services); 39 Calif. State Bar Journal 639-742 (Report of Committee on Group Legal Services). Moreover, the complexity of these matters makes them especially suitable for experimentation at the local level. And, all else failing, the Congress undoubtedly has the power to implement federal programs by establishing overriding rules governing legal representation in connection therewith.